# ANIMAL ABUSE/DEPARTMENT OF FISH AND GAME

## Fish and Game: Penalties

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Prior law only provided for a fine of not more than $1,000 and/or imprisonment in the county jail for more than six months for illegally placing or planting live fish, water animals, or aquatic plants in state waters without the Department of Fish and Game's permission. Reflecting the magnitude of potential damages occurring from prohibited conduct, new law provides for state taxpayers and local economies dependent on maintaining viable commercial and sport fisheries.

The illegal introduction of species into California waters poses a substantial risk to commercial and sport fisheries; endangered species may be destroyed.

> ***AB 1625 (Richter), Chapter 431*****,** makes conduct prohibited currently by state law equivalent to civil and criminal penalties. By providing significant reward provisions, AB 1625 includes new incentives to encourage citizens to turn in violators. AB 1625 also contains significant new provisions for reimbursing taxpayers for response and remediation expenses incurred by the state due to the prohibited conduct.
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> AB 1625 increases custody to a minimum of six months and a maximum of one year and the maximum fine from $1,000 to $50,000 for placing or planting an "aquatic nuisance species" in any state waters without first obtaining permission from the Department of Fish and Game. AB 1625 makes violation also punishable by revocation of all fishing licenses and permits held by the defendant and provides that a defendant may be held monetarily liable for damages.

## Performing Animals

Circuses are licensed and governed by the Animal Welfare Act, which is administered by the United States Department of Agriculture (USDA). With 7,800 licensed shows nationwide, performing at 10,400 sites and only 73 inspectors, enforcement is difficult at best.

In California, nonresident permits can only be issued to those licensed by USDA and professionally exhibit animals in another state. Nonresident permittees are not allowed to exceed their stay in California, unless they provide facilities which meet the caging standards established by regulations for each animal listed on the permit. Notification requirement enhances the ability of local animal control officers to enforce humane protection laws.

> ***AB 1635 (Migden), Chapter 579,*** requires a traveling circus or carnival that performs in California to notify each entity that provides animal control services for a city, county, or city and county in which the traveling circus or carnival

intends to perform of its intent to perform within that jurisdiction, as specified, and to provide that entity with a schedule of its performances in California. AB 1635 makes it a misdemeanor to violate either of these provisions, punishable by a fine of not less than $500 and not more than $2,000 for a first violation; for a second or subsequent violation, by a fine of not less than $1,500 and not more than $5,000.

## Animal Euthanasia

The carbon monoxide (CO) chamber is not the most humane animal euthanasia method nor is it suitable for all animals. In addition, the CO chamber may pose a heath hazard to animal shelter personnel. According to the State Auditor, the Department of Food and Agriculture is not inspecting CO chambers as required by law.

***SB 1659 (Kopp), Chapter 751*****,** prohibits using CO gas for dog or cat euthanasia as of January 1, 2000. Specifically, this new law:

- Prohibits CO use for killing dogs or cats as of January 1, 2000.
- Prohibits using gas to kill any newborn dog or cat whose eyes have not yet opened.
- Repeals inspections of CO chambers as of January 1, 2000, and makes conforming changes.
- States legislative intent that the California Veterinary Medical Board consider the needs of small and rural counties in developing any regulations necessary to implement this act.

## Stray Animals: Duties of Pounds and Shelters

Animal shelters and private individuals have the same responsibility to animals in their care. The number of adoptable animals euthanized at shelters can be reduced by increasing the focus of shelters to owner redemption and adoption.

Additionally, this new law requires better records to find lost pets.

***SB 1785 (Hayden), Chapter 752,*** provides that a public or private animal shelter is subject to the same anti-cruelty statutes as a private citizen who takes possession of a stray dog or cat. SB 1795 also requires animal shelters to:

- Keep animals for a minimum of three business days before they are put up for adoption and a minimum of six business days before they are euthanized.
- Make animals available to non-profit rescue societies or adoption organizations free of charge, excluding reasonable spay or neuter costs.

- Maintain accurate records of all animals turned over to the shelter from the time of possession.

- Keep and provide for any legally ownable pet.

- Make reasonable efforts to contact the owner of an animal in the shelter's possession and to inform the owner of recovery procedures.

In addition, SB 1785 provides it is state policy that no adoptable animal should be euthanized.

**Animal Cruelty: Probation**

The link between animal abuse and future human abuse has been, and continues to be, documented. Demonstrating the seriousness of aggressive acts toward animals, the Federal Bureau of Investigation includes animal abuse, in addition to bed-wetting at an unusual age and arson, in its serial killer triad used to profile suspects. For example:

- Mass murderer and cannibal Jeffrey Dahmer killed neighborhood pets and impaled a dog's head before he moved on to violent acts against humans.

- Albert De Salvo (the Boston Strangler) shot arrows into boxes of trapped dogs in his youth.

- Carroll Edward Cole, convicted of 35 murders, admitted his first act of violence - strangling a puppy – was as a young child.

Animal abuse is a possible precursor to child or elder abuse. In domestic violence situations, animal abuse is often used to demonstrate power and control. Although courts have the discretion to request counseling for a defendant, application is inconsistent.

***SB 1991 (O'Connell), Chapter 450,*** requires counseling as a condition of probation for any person convicted of killing, maiming or abusing an animal. SB 1991 requires judges to specify, on the court record, his or her reasons for not imposing custody as a condition of probation. Specifically, this new law:

- Requires counseling as a condition of probation for any person convicted of various acts of animal abuse including killing, maiming, mutilating, torturing, and cruelly overworking an animal.

- Provides that if a person cannot afford to pay for counseling, he or she is allowed to pay on a sliding scale basis or by deferred payment.

- Provides that county mental health departments or Medi-Cal are responsible for the counseling costs for only those persons meeting the medical necessity criteria, as specified.

- Provides that counseling is a mandatory additional term of probation and not used in lieu of any other probation term such as a fine or imprisonment.

- Requires a judge to specify on the court record his or her reasons if he or she does not order custody as a condition of probation for animal abuse.

# BACKGROUND CHECKS

## Crime Prevention: Fingerprints

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The Michelle Montoya School Safety Act of 1997 required a school employee applicant to undergo a criminal history background check before the district was allowed to hire the applicant. An unintended consequence of this act was when a teacher having a skin condition, “atopic dermatitis”, was denied employment because he could not provide a legible fingerprint.

To alleviate this problem, there needs to be a method for the Department of Justice (DOJ) to conduct a criminal background check on an applicant who cannot provide a legible fingerprint due to a medical condition or disability. Upon the completion of a criminal records search using the applicant's personal identifiers, DOJ could then submit the criminal records history to the school district. As fingerprints are required for many other jobs, an alternative background check process could be utilized by an agency authorized to conduct a background check.

> ***AB 75 (Alby), Chapter 452,*** provides the DOJ can use alternative procedures for checking a person’s criminal background history when that person's fingerprints cannot be legibly taken, such as when a person does not have fingers or hands.

## Health and Community Care Facilities

Direct caregivers in all skilled nursing facilities are not required to be fingerprinted.

> ***AB 1068 (Campbell), Chapter 898*****,** requires background checks for operators and employees of intermediate care, developmentally disabled, and social rehabilitation facilities. (Current law requires all residential or community care facility employees licensed by the Department of Social Services to undergo a background check.) This new law requires the Department of Health Services to conduct background checks on the facilities they license and also requires a qualified mental retardation professional to undergo six months of administrative training before serving as an administrator at an intermediate care facility.
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> This new law was an urgency measure and became effective on September 28, 1998.

## Arson

Current law requires convicted arsonists to register with local police agencies; however, in many instances, this information is never communicated to the fire agencies that investigate cases.

***AB 1844 (Thompson), Chapter 359,*** requires law enforcement to make arson registration information available to local fire officials.

**School Employees**

AB 1610 (Ortiz), Chapter 588, Statutes of 1997, and AB 1612 (Alby), Chapter 589, Statutes of 1997, were introduced to prevent violent felons from coming into contact with children. AB 2102 was introduced as clean-up legislation to AB 1610 and AB 1612.

***AB 2102 (Alby), Chapter 840,*** modifies the conditions under which criminal offenses disqualify persons from school-related employment; the persons who must undergo criminal background checks; the manner, timing and procedure for obtaining information related to background checks; and makes other changes to the Education Code.

The new law requires both private and public schools to request subsequent arrest service from the DOJ whereby the DOJ notifies the schools of subsequent arrests of employees or applicants who have undergone criminal background checks.

This law precludes from public school employment any person convicted of a sex offense, as defined, where the victim was a minor even if the conviction is later dismissed pursuant to Penal Code Section 1203.4.

This law deletes the DOJ's authority to forward the fingerprints of an applicant for employment in a certificated position to the Federal Bureau of Investigation.

This law provides a person cannot be denied a temporary certificate or temporary certificate of clearance solely because such person was convicted of a serious, but not violent, felony if the person can prove he or she has been rehabilitated for the purposes of school employment for at least one year.

This law allows a teacher, supervisor and other school employee whose position requires certification qualifications to be employed after being convicted of a serious or violent felony, as defined, where such a person is acquitted of the offense in a new trial or the charges are dismissed, unless the charges are dismissed pursuant to certain provisions of law (Penal Code Section 1203.4).

This law gives the DOJ the discretion to notify the school district in instances where an employee of any entity having a contract to provide certain types of services to the school or district of a pending criminal proceeding or criminal conviction of a violent or serious felony, as defined.

Finally, AB 2102 provides an entity that contracts with a private school or school district for the construction, reconstruction, rehabilitation, or repair of a school

facility is not required to comply with certain requirements for fingerprinting and obtaining criminal backgrounds of its employees if there is an emergency or exceptional situation, there is a physical barrier installed at the work site to limit contact with pupils, there is continual supervision and monitoring of all employees of the entity by a cleared employee of the entity, or there is surveillance of employees of the entity by school personnel.

This law incorporates changes made to Education Code Section 44237 by AB 1392 (Scott), Chapter 594.

This new law was an urgency measure and became effective on September 25, 1998.

## Sex Offender Registration: Disclosure

Currently, there is no statutory requirement for a sex offender to inform individuals of his or her sex offender status when applying for a volunteer position or job working with children. As a result, many small or informal organizations are unaware of the sex offender's background.

***AB 2259 (Aguiar), Chapter 959*****,** requires a registered sex offender to disclose his or her registered sex offender status when he or she applies for or accepts "a position as an employee or volunteer with any person, group, or organization where the registrant would be working directly and in an unaccompanied setting with minor children on more than an incidental or occasional basis or has supervision or disciplinary power over minor children." The disclosure is to the person, group or organization to which the registrant applies or accepts a position.

## Foster Care

Existing law requires that before issuing a license or special permit to operate or manage a community care facility to any person, the Department of Social Services (DSS) must determine if that person or any director or officer of an applicant corporation has ever been convicted of certain crimes and requires DSS to deny the application in the case of a conviction of one or more of those crimes.

***SB 933 (Thompson), Chapter 311*****,** requires an applicant to submit a second set of fingerprints for purposes of searching Federal Bureau of Investigation criminal records. SB 933 authorizes the issuance of a license when the fingerprints have been submitted and all licensing qualifications have been met, except for the receipt of criminal history information from the Federal Bureau of Investigation subject to revocation if the DSS determines the person has a criminal record. In limited circumstances, this law, in limited circumstances, authorizes the DSS Director to grant an exemption from licensure denial if the DSS Director

determines that the person convicted of a crime is of such good character as to justify issuance of the license or special permit.

SB 933 authorizes DSS to create substitute group-home employee registries for persons working at more than one facility licensed by DSS to submit fingerprint cards and child abuse index information for child care registries.

The new law also specifies procedures to be followed when DOJ cannot ascertain information concerning an applicant's criminal record check within a specified period.

This new law was an urgency measure and became effective on August 19, 1998.

## Private Patrol Operators

Consumers should be informed that temporarily registered private security guards have not completed full criminal history checks. In addition, electronic fingerprint processing for applicants should be authorized.

***SB 2044 (Rainey), Chapter 830*****,** modifies the temporary registration process for security guards as administered by the Department of Consumer Affairs (DCA), Bureau of Investigative and Security Services (BSIS). Specifically, this new law:

- Requires a security guard employed by a licensed private patrol operator (PPO) to submit a completed registration application and two fingerprint cards to BSIS within three business days.

- Requires PPOs to notify their clients, in writing, that security guards possessing temporary registration cards have not completed full criminal history investigations by the DOJ.

- Requires a disclosure statement printed on the temporary registration card that the cardholder’s criminal history has not been completed and is unknown, and other specified information.

- Authorizes BSIS to permit security guard applicants to submit their fingerprints into the DOJ electronic fingerprinting system in lieu of submitting two classifiable fingerprint cards.

- Permits local law enforcement agencies that provide fingerprint transmittal services through electronic fingerprinting terminals as part of the DOJ system to charge a fee to recover their processing costs.

## Residential Care Facilities: Home Health Care

Certified home health aides (CHHAs) and certified nurse assistants (CNAs) who already have been cleared through the more rigorous Department of Health Services criminal screening process should be allowed to work in residential care facilities without having to receive a second clearance through the DSS, thus streamlining the background clearance process.

***SB 2194 (Wright), Chapter 831,*** clarifies criminal clearance requirements for CNAs and CHHAs. Specifically, this new law deems that CNAs and CHHAs, by virtue of their certification, meet the criminal clearance requirements applying to persons providing care in residential care facilities for the elderly and persons with chronic life-threatening illnesses and adult community care facilities. SB 2194 requires a CNA or a CHHA to provide a copy of his or her certification to facilities where he or she provides service, and requires the facility to keep the copy on file. The new law also removes a fingerprinting exemption.

# BAIL

## Surrender Procedure and Bail Forfeiture

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Under existing law, a certified copy of a bail bond is required when a fugitive is surrendered into custody. Often, a defendant is surrendered on a weekend or holiday, making it difficult or impossible to obtain a certified copy of the bail bond as the county clerk's office is closed.

Further, the court is presently required to declare the undertaking of bail forfeited if, without excuse, the defendant fails to appear in court. In many instances, the bond is not declared forfeited in open court; rather, a court clerk declares the bond forfeited days or weeks later. By delaying the declaration of forfeiture, the defendant has an opportunity to flee and avoid apprehension.

> ***AB 2083 (Baugh), Chapter 223,*** allows a bail licensee or surety company to surrender a defendant to the custodial officer previously having custody over the defendant by delivering an affidavit containing all information included on a certified copy of the undertaking of bail.
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> This new law also requires the court declare any forfeiture of bail in open court if a defendant fails to appear in order that the bail agent or surety company receives notice of the forfeiture at the earliest possible time.

## Procedural Changes

Current law provides that "…no bail shall be accepted unless the judge or magistrate is convinced that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained." However, existing statute does not set forth in more detail what the burden of proof is to show that some portion of the bail was feloniously obtained. Additionally, current law makes no specific provision allowing a judge or magistrate to close a hearing on the source of the bail to the general public

> ***SB 55 (Kopp), Chapter 726,*** makes procedural changes for releasing persons on bail. This new law:
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> - Provides a judge can only order a hold on the release of a defendant from custody if either a peace officer or a prosecutor files a declaration executed under penalty of perjury setting forth probable cause to believe that the source of any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained, or if the judge or magistrate has such probable cause.

- Provides the defendant and his or her attorney must be provided with a copy of the declaration within 48 court hours after defendant's arrest, and gives a prosecutor civil immunity for executing such a declaration.

- Provides that if the declaration filed with a judge is not acted on within 24 hours, the defendant must be released from custody upon posting of the amount of bail set.

- Provides that once a judge has determined that probable cause exists, a defendant bears the burden of establishing by a preponderance of the evidence that no part of any consideration, security or indemnification given or promised for its execution was obtained by felonious means.

- Provides that once a defendant has met the burden, the judge must release the hold previously ordered and the defendant must be released under the authorized amount of bail.

- Defines "feloniously obtained."

- Provides this law does not deny the defendant the right, either personally or through a representative, to apply with the magistrate for bail or to prohibit a defendant from obtaining a loan of money so long as the loan will be funded and repaid with funds not feloniously obtained.

- Provides that a judge may choose to close from the general public an evidentiary hearing inquiring into the source of the funds if such a request is made by any person providing any portion of the consideration, pledge, security, deposit or indemnification.

- Adds violent felonies to the list of offenses which require a judge to find "unusual circumstances" prior to reducing the bail for a person charged with such an offense below the amount set in the county-wide bail schedule (although virtually all such offenses are already included in the statute as "serious" felonies).

**Failures to Appear**

The incidence of defendants failing to appear in court after being released from custody on their own recognizance is excessive. A court must carefully consider whether to release a defendant on his or her own recognizance when that defendant has a past history of abusing such orders.

***SB 1480 (Kopp), Chapter 520,*** prohibits the release of any person on his or her own recognizance until a hearing is held in open court for any person on felony probation or parole, or for any person who has failed to appear three or more

times in the preceding three years and is arrested for certain specified offenses. Specifically, this law provides that:

- No person arrested for a new offense may be released on his or her own recognizance until a hearing is held in open court before a magistrate or judge. This provision applies to any person who is currently on felony probation or parole or who has failed to appear in court as ordered, resulting in a warrant being issued, three or more times over the three years preceding the current arrest, except for Vehicle Code violation infractions.

- A person as specified above may not be released on his or her own recognizance for any felony offense; any California Street Terrorism Enforcement and Prevention Act violation; any assault and battery; any theft; any burglary; and any offense in which the defendant is alleged to have been armed with, or personally used, a firearm.

**Bench Warrants**

When a person released on a private bail bond fails to appear in court as directed and a bench warrant has been issued, the respective surety has an obligation to return the fugitive within 180 days or the bail bond is forfeited to the state. Existing law requires that the appropriate agency enters bench warrants issued on private, surety bonded felony cases into the national warrant system.

If a fugitive who "skips" bail remains in California, it is common practice for surety or bail agents to contact local law enforcement for assistance in apprehending the fugitive. Local law enforcement agencies rely on the National Crime Information Center (NCIC) system to determine if the appropriate bench warrant has been issued. If the bench warrant has not been entered into the system, local law enforcement withholds assistance.

When a surety or bail agent exercises his or her obligation to apprehend a fugitive without local law enforcement assistance, the public, the bail agent, and the fugitive are all at greater risk. If the fugitive flees California and the bench warrant is not in the system, the fugitive may escape justice entirely and the surety's bond may be forfeited through no fault of the surety.

***SB 1632 (Johnson), Chapter 183,*** allows for a felony bail bond to be returned to the depositor if a bench warrant is not entered into the NCIC warrant system and the court having jurisdiction over the bail bond finds any of the following:

- That the failure to enter a bench warrant into the NCIC warrant system prevented the surety or bail agent from surrendering a fugitive into custody.

- That the failure to enter a bench warrant into the NCIC warrant system prevented the surety or bail agent from having a fugitive arrested or taken into custody.

- That the failure to enter a bench warrant into the NCIC warrant system resulted in a fugitive's release from custody.

# CHILD ABUSE

## Employment Agencies: Child Care Providers

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Trustline is an important tool, established to ensure that a person convicted of abusing children in will never have the opportunity to do so again.

However, Trustline will not be effective if parents are not aware of its existence and child care employment agencies fail to use it.

> ***AB 2001 (Kuehl), Chapter 287,*** requires every employment agency referring a child-care provider not required to be a licensed day-care facility to provide specified information to the employer regarding the Trustline Registry. This new law requires written verification of receipt of that information by an employer. This law also provides an employment agency that makes such a referral cannot place a provider who is not a Trustline applicant or a registered child-care provider. A violation of the latter prohibition is a misdemeanor.

## Child Abuse: Reports

The protection of children is one of society's most important responsibilities. Every day, children are abused or injured, often at the hands of those responsible for their immediate care. Attorneys representing children under the care of the county must receive information in an expedient manner from county employees regarding abused or injured children even when the county itself may be held liable for the injury.

> ***AB 2316 (Knox), Chapter 900,*** increases the ability of an attorney representing a child in protective custody to obtain information regarding any abuse inflicted on the child by: (1) requiring employees of a child protective agency to timely report to the child's attorney when the employee knows or suspects a child has been the victim of child abuse; and (2) requiring the child protective agency to cooperate in discovery. Specifically, the new law:
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> - Requires any employee of a child protective agency who knows or reasonably suspects that a child in protective custody has been the victim of child abuse to, within 36 hours, send, or have sent to the attorney who represents the child in dependency court, a copy of the suspected child abuse and neglect report, as specified.
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> - Requires that all information requested from a child protective agency regarding a child in protective custody, or from a child's guardian ad litem, be provided to the child's counsel within 30 days.
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> - Clarifies that an attorney is not required to assume the responsibilities of a social worker and is not expected to provide non-legal services to the child.

## Child Abuse

In 1994, in Los Angeles alone, either a parent or a caregiver murdered 39 children. Twelve of the children murdered had open cases with child protective services.

***SB 645 (Polanco), Chapter 949,*** requires, when appropriate, a physical examination of a child taken into protective custody because of alleged physical or sexual abuse, and requires a background check when a child is placed in the home of a non-licensed foster parent. Specifically, this new law.

- Requires the child welfare department or law enforcement agency that takes a child into protective custody because of alleged physical or sexual abuse to consult with a medical practitioner, and when deemed appropriate, cause the child to undergo a physical examination. Whenever possible, the examination must be performed within 72 hours of the allegation.

- Provides that in the event allegations are made while the child is in custody, the physical examination must be performed within 72 hours of the time the allegations are made.

- Specifies that the results of the physical examination must be given to the court and attorneys for the parties at the hearing to determine whether continued detention of the child is warranted. Failure to obtain the physical examination is not grounds to deny the continued detention.

- Requires the local child welfare agency, whenever possible, to arrange subsequent medical examinations with the same medical practitioner who performed the initial examination. When this is not possible, the child welfare agency ensures that future medical practitioners have access to the child's medical records relating to abuse.

- Provides that prior to placing a child in the home of a relative, guardian or other person not a licensed or certified foster parent, the child welfare agency must: (1) visit the home to determine the appropriateness of the placement; and (2) perform a criminal records check through the California Law Enforcement Telecommunications System of all persons over the age of 18 living in the home, those who may have significant contact with the child, and any other person who has a familial or intimate relationship with any person living in the home. If it appears that a person upon whom a check was conducted may have a criminal record, a fingerprint check through the Department of Justice must be conducted.

- Provides that if a person, upon a records check, has been convicted of a crime that precludes licensure, the child may not be placed in the home.

- Requires the Department of Social Services to report to the Legislature by January 1, 2002 regarding the number of foster children placed with relatives, the availability of relative placements, and the incidence of crimes against foster children living in the homes of relatives.

# CHILD SUPPORT

## Child Support: State Agencies: Contracts

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Enforcement of child support orders benefits all Californians by reducing the burden on the state and local entities to provide public benefits to children not receiving the financial support they are entitled to receive.

***AB 1396 (Alquist), Chapter 899,*** requires specified written contracts between a contractor and a state agency to include a provision certifying that the contractor is in compliance with state and federal law as it pertains to specified child support enforcement requirements. This new law enhances enforcement by making employers' compliance with existing support order rules a required condition for obtaining state agency contracts.

## Domestic Violence: Confidentiality of Identifying Information

California law allows an ex parte protective order to be issued prohibiting the disclosure of the address of a child or party in a proceeding under the Uniform Interstate Family Support Act (UIFSA), but fails to establish the procedure for the issuance of that order.

***AB 1900 (Cardenas), Chapter 511,*** sets forth the required procedure for seeking an ex parte order prohibiting the disclosure of the address or other identifying information of a party or child in an interstate child support case if the court finds disclosure would put the party or child at unreasonable risk for specified harm. Specifically, the new law requires:

- An application for a nondisclosure order to set forth facts that demonstrate the health, safety, freedom of movement, or physical or emotional well-being of the applicant may be put unreasonably at risk by the disclosure of the applicant's address or other identifying information.

- The nondisclosure order to designate a mailing address for service of process on the protected party, and provide that the mailing address may not be the address of a governmental agency unless the agency has consented in writing. A copy of the order is served by first-class mail on the other party to the proceeding and the district attorney.

- The Judicial Council to adopt forms and notices to implement this procedure.

This new law also requires a support enforcement agency providing services to a petitioner for interstate child support cases to:

- Inform the petitioner of the requirement that the pleadings contain identifying information about the petitioner and the child, including the residential address, unless an order of nondisclosure is granted.

- Inform the petitioner of his or her right to seek an order of nondisclosure and provide information regarding how that order may be obtained.

- Inform the petitioner that the support enforcement agency will seek an order of nondisclosure on behalf of the petitioner if the petitioner has previously obtained a protective or restraining order or has been granted a good cause exception from cooperation requirements pursuant to Welfare and Institutions Code Section 11477.04.

This new law clarifies that nothing in the section detailing the procedure for the nondisclosure order be construed to require a party to obtain such an order before using a confidential address on court pleadings in non-UIFSA family law proceedings.

**Human Services**

According to the Department of Social Services, several technical statutory corrections relating to the child support enforcement program needed to be made as required by federal law.

***AB 2169 (Kuehl), Chapter 858,*** makes various technical corrections to statutes relating to the enforcement of child support as required by federal law. Specifically, this new law:

- Clarifies, in accordance with federal law, that in ensuring the confidentiality of support enforcement and abduction files, no case information be released regarding the whereabouts of either a party or child if a protective order has been issued or if the agency responsible for establishing or enforcing support has reason to believe that the release of the information may result in physical or emotional harm to either the party or the child.

- Makes applicable to labor union hiring halls, the requirement that employers report specified information about new employees to the Employment Development Department for inclusion in the New Employee Registry, as required by federal law.

- Makes a technical correction to the data elements that each county district attorney's office electing to participate in the state child support incentive program is required to report to the Department of Social Services to conform with federal requirements.

## Civil Proceedings: Dissolution of Marriage: Paternity

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Existing law specifies the method for calculating child support. That formula is based, in part, on the percentage of time the high earner has or will have primary physical responsibility for the children compared to the other parent. In any proceeding for child support where a party fails to appear and in certain default proceedings, existing law deems that percentage to be in favor of the custodial parent, regardless of which party is the defaulting party, where there is no evidence presented demonstrating the percentage of time that the non-custodial parent has primary physical responsibility for the children.

Under existing law, the child of a wife cohabiting with her husband not impotent or sterile is presumed to be a child of the marriage, except where the court finds, based on blood tests, that the husband is not the child's father. This exception is not applicable in cases where the child was conceived, with the consent of the husband, by artificial insemination or a surgical procedure.

> ***AB 2801 (Assembly Judiciary Committee), Chapter 581,*** provides that a statement by the party not in default as to the percentage of time that the non-custodial parent has primary physical responsibility for the children is deemed sufficient evidence of that time and the percentages provided in the code do not apply.
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> This new law additionally clarifies that blood tests may not be used to challenge paternity in those limited cases.

## Child Support Enforcement: Incentive Program

Child support enforcement is a key component of welfare reform, ensuring that children receive financial support from both their parents and reducing their need for welfare. Unfortunately, California operates one of the poorest child support programs in the nation, collecting support for less than 14 percent of children who receive state assistance.

Each year, the state pays county district attorneys hundreds of millions of dollars as an incentive to improve child support performance. Currently, dollars are apportioned among the counties on a flat percentage rate (13.6 percent), which does not encourage counties to improve sufficiently. Statistics show California at or near the bottom in all child support performance benchmarks.

> ***SB 1410 (Burton), Chapter 404***, changes the formula for awarding incentives to county child support enforcement programs to improve the state's child support collection record. Specifically, this new law:
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> - Implements the Legislative Analyst's Office's performance-based child support incentive proposal.

- Phases in the performance-based incentive model. Through September 30, 1999, a county complying with specified data reporting requirements is entitled to a combined federal and state incentive payment of 13.6 percent of the county's distributed collections.

- Provides that, beginning with October 1, 1999, incentive payments are based on a county's cost-effectiveness and administrative effort. In calculating the incentive payment, additional weight is given to collections for CalWORKS families and former CalWORKs recipients. In order to receive any state incentives, a county must comply with specific data reporting requirements and comply with state and federal child support laws and regulations.

- Prohibits any county with a performance score in the bottom quarter of all counties and with an improvement rate less than the statewide average from receiving any state incentives unless the county accepts technical assistance from the Department of Social Services for improving the county's child support program.

- Sets a minimum and maximum percentage of county collections that will paid as state incentives, and mandates that every county continue to receive federal child support incentive funding whether or not the county elects to participate in the state child support incentive funding program.

# COMPUTER CRIMES

## Counterfeit of a Mark: Punishment

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Rapidly changing technology allows illegal duplicators of computer software and computer games to easily replicate large numbers of programs onto new storage media, e.g., CD-ROMS. Thousands of dollars of software can be copied onto one CD-ROM, then sold for a few hundred dollars. Because such “compilation CD's” can be made to order, it is difficult to catch such replicators having large amounts of inventory. In addition, the number of registered marks involved may be insufficient for felony prosecution under Penal Code Section 350 even though each counterfeit item may represent large losses for legitimate manufacturers.

***AB 231 (Honda), Chapter 454*****,** conforms counterfeiting law with general theft provisions, and provides the punishments and fines for persons and corporations that intentionally sell, knowingly possess for sale, or willfully manufacture smaller quantities of items only apply if the value of such items does not exceed the cutoff for grand theft (usually $400). Specifically, this new law:

- Eliminates the statutory requirement that the action be "without the consent of the registrant" before a crime is established.
- Makes law the same regardless of whether possession of the articles was "at the point of sale" or not.
- Provides the lower penalties for an offense involving less than 1,000 articles only applies if the value of such articles is less than that required for grand theft (typically $400), as defined.
- Revises the definitions of "counterfeit mark", "registrant", "knowingly possess" and "retail or fair market value".
- Makes technical and conforming changes.

## Advertising: Telephonic Sellers: Electronic Mail

“Spamming” and domain name fraud needs to be prevented. Domain names can be considered the addresses of the paths used to transmit e-mail via the Internet. AB 1629 stops “spamming” by: (1) allowing electronic mail service providers to sue “spammers” for damage they cause to electronic mail networks; and (2) criminalizing unauthorized domain name use.

Internet users face a daily onslaught of unsolicited e-mail from Internet businesses advertising goods and services. “Spamming”, the practice of sending mass e-mails,

often imposes a significant time burden on Internet users and often can slow down or disrupt on-line service.

***AB 1629 (Miller), Chapter 863,*** prohibits the unauthorized use of electronic mail networks to send unsolicited e-mail advertisements ("spam") and exempts specified non-profit organizations from the state's telemarketing regulatory scheme. Specifically, this law:

- Exempts specified non-profit business organizations (chambers of commerce, business leagues, real estate boards, and boards of trade) that have an established history in the state from the registration and bonding requirements for telemarketing sellers.

- Increases the maximum daily civil damages for "spamming" violations from $15,000 to $25,000.

- Establishes a specific penalty for domain name forgery with a fine of up to $5,000 and/or imprisonment of up to one year.

- Clarifies that the "spamming" provisions apply only to networks located in California.

**Advertising: Electronic Mail**

Internet users face a daily onslaught of unsolicited e-mail from Internet businesses advertising goods and services. Individual consumers should have the right to opt out of being on "spam" distribution lists and individuals not complying with consumers' wishes should be fined.

***AB 1676 (Bowen), Chapter 865,*** allows consumers the option of opting out of "spam" distribution lists and makes "spamming" a misdemeanor punishable by a fine and/or imprisonment.

This new law prohibits unsolicited commercial e-mail and clarifies that the law applies only to unsolicited commercial e-mail originating in and sent to California residents. A violation is a general misdemeanor, punishable by $1,000 and/or imprisonment (the same as a violation of general advertising law). This law becomes inoperative if a federal law on this subject is enacted.

This new law is modeled on the state's existing junk fax law, which allows individuals to opt-out of receiving unsolicited advertising via fax and imposes a $500 fine for each violation [see AB 2438, (Katz), Chapter 564, Statutes of 1992].

## Computer Crime

When living in an age increasingly dominated by computers, it is important for law enforcement to be adequately trained in high technology crimes. Law enforcement training in high technology crimes and a feasibility study for a state-operated, computer forensics center are needed. If a patrol officer is inadequately trained, a high-tech crime may go unrecognized or unsolved. If a computer examination is not conducted properly, valuable evidence may be lost and valuable property damaged. New technologies are greatly affecting the manner in which traditional crimes are being carried out. Stalkers are now using computers, faxes, and other means to invade the privacy and the rights of their victims.

***AB 2351 (Hertzberg), Chapter 826****,* expands current stalking and telephone harassment laws to include contacts made through electronic communication devices such as computers. This new law requires police officers to receive training in high technology crimes and requires the Office of Criminal Justice Planning (OCJP) to conduct a feasibility study with respect to a state-operated center on computer forensics. Specifically, this new law:

- Adopts the definition of "electronic communication device" (ECD) found in current federal law.
- Clarifies that the ECD definition applies to the credible threat and other provisions included in AB 2351.
- Provides that an offense committed by means of an ECD medium, including the Internet, may be deemed to have been committed where the electronic communication was originally sent or was first viewed by the recipient.
- Clarifies that telephone calls or electronic contacts made in good faith are not punishable.
- Amends the police officer training provision so that high technology crimes training is mandated only for police officers or sheriffs at a supervisory level, and offered to all officers and sheriffs as part of continuing professional training.
- Appropriates $230,000 from the General Fund to the OCJP for the purpose of performing the feasibility study.

## Advertising: Telephonic Sellers: Electronic Mail

Existing law governing traditional means of advertising (print, television and radio) should be clarified and applied to Internet business. The rules of commerce on the Internet must be clear in order for California consumers and businesses to remain protected when using this new and fast growing medium of commerce. There has been

a tremendous growth rate in Internet commerce - anticipated to be 1100 percent between 1996 to 2000 - necessitating immediate state action.

***SB 597 (Peace), Chapter 599,*** clarifies that commerce directed at California consumers via the Internet must comply with the provisions of California's false advertising laws. Specifically, this new law:

- Clarifies that any solicitation, transaction, or other communication regarding the sale of goods and services made over the Internet is unlawful if it violates California's consumer protection laws.

- Includes Internet sales within the business practices regulated under the state's consumer protection laws.

- Extends jurisdiction to out-of-state Internet providers who sell to Californians via the Internet.

- Exempts specified media/publications from the bill who advertise in good faith.

- Adds language to avoid chaptering out SB 1476 (Costa), Chapter 354.

**High-Tech Crimes**

The Legislature adopted SB 438, chaptered into law in September 1997. Since then, OCJP and others have asked for clarifying language and guidance in implementing that high technology crime and high technology industry law. The high technology industry requested OCJP's Advisory Committee to the High Technology Theft Apprehension and Prosecution Program (HTTAPP) be reconstituted and OCJP also requested legislative direction regarding implementing prior law.

***SB 1734 (Johnston), Chapter 555,*** redefines and clarifies the purpose and funding mechanism of the HTTAPP and makes other HTTAPP changes. Specifically, this new law:

- Provides the Executive Director of OCJP awards funds allocated for the HTTAPP to regional high technology theft crime programs (task forces), rather than individual counties, and adds chiefs of police to those authorized to apply for this assistance.

- Renames the steering committee designed to implement the HTTAPP, expands the committee's composition, redefines and clarifies the committee's purpose and functions, and provides further committee rules.

- Redefines and expands what constitutes high technology crimes.

- Clarifies that up to 10 percent of HTTAPP funds can be used for developing and maintaining a statewide data base on high technology crime, and that the full 10 percent of funds does not have to be used for that purpose.

- Makes other program changes.

This new law was an urgency measure and became effective on September 18, 1998.

**Stalking: Cyberstalking**

Using electronic communication to stalk or harass a victim should be punishable under current stalking and harassment laws. New 'high tech stalking' can take the form of threatening, obscene or hateful e-mail, pages, voice mail messages, etc. California was the first state in the nation to pass an anti-stalking law in 1990. Since then, every state in the nation has followed California's lead and has passed similar anti-stalking legislation and at least seven other states have already updated their laws to include electronic communication.

***SB 1796 (Leslie), Chapter 825,*** updates stalking and harassment laws to accommodate new technology. This new law clarifies that electronic communication devices include, but are not limited to, telephones, cellular telephones, computers, video recorders, televisions, fax machines, or pagers. Specifically, this new law:

- Expands the definition of "credible threat" in the tort of stalking to include threats communicated by means of an electronic communication device or a threat implied by a combination of verbal, written, or electronically communicated statements.

- Clarifies that the provisions of the “terrorist threat” offense apply to threats made by means of an electronic communication device.

- Expands the definition of "credible threat" in the stalking statute to include a threat performed through the use of an electronic communication device or a threat implied by a pattern of conduct or a combination of verbal, written or electronically communicated statements and conduct, made with specified intent.

- Expands the offense related to harassing phone calls to include repeated contact by means of electronic communication device with specified intent.

- Creates a good-faith exception for obscene or threatening telephone calls or electronic contacts made with intent to annoy.

- Provides that any offense committed by use of an electronic communication device or medium, including the Internet, may be deemed to have been committed where the electronic communication or communications were originally sent or first viewed by the recipient.

- Incorporates the definition of "electronic communication" device used in a specified provision of federal law.

# CONTROLLED SUBSTANCES

## Controlled Substances: Abatement

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Six years ago, the City of Los Angeles created the FALCON Unit (Focused Attack Linking Community Organizations and Neighborhoods) to encourage voluntary abatement of nuisances caused by illegal drug sales around a landlord's property. The City found that arrests alone do not rid the community of drug activity and concluded that targeted evictions would be useful to better attack drug-related activities around rental properties. However, under current law, a landlord must evict all the tenants living in a unit, including innocent tenants, as the court has no authority to issue a partial eviction order.

***AB 1384 (Havice), Chapter 613***, creates a pilot project authorizing a district attorney or city attorney in five Los Angeles County court districts to bring a new type of unlawful detainer action against a person who engages in drug-related activity on a rental premises. AB 1384 permits the pilot court to then issue a partial or total eviction order to remove an individual who engages in the drug-related activity. Specifically, this new law:

- Authorizes a city attorney or city prosecutor in Los Angeles County to bring an experimental type of unlawful detainer action in five, time-limited pilot court districts against a person who engages in drug-related activity on a rental premises.

- Authorizes a pilot project court to issue a partial eviction order to remove a tenant who engages in the drug-related activity on the premises. The court may include in this order a condition that the remaining tenants not give permission or invite any tenant barred from the premises to re-enter or return to the premises.

- Provides that in any unlawful detainer action brought under the pilot program: (1) the city attorney or city prosecutor first give 15 calendar days' written notice documenting the alleged nuisance to the landlord and the offending tenant; (2) if the landlord fails to file an unlawful detainer action, the district attorney or city attorney may then file such an action and may join both the landlord and the offending tenant as co-defendants; and (3) if a defendant tenant is found guilty of unlawful detainer, the public entity which brought the action may be awarded costs paid by the landlord up to $600.

- Requires the city attorney and city prosecutor to maintain records of all actions filed under these provisions, commencing January 1, 2000, and to annually file copies of these records with the Judicial Council by January 30th of each year. This new law also requires the court, after judgment is entered

in any proceeding brought under these provisions, to submit information about these cases to the Judicial Council.

- Requires the Judicial Council to submit a brief report to the Senate and Assembly Judiciary Committees on or before January 1, 2001 evaluating the merits of the pilot program.

- Sunsets the pilot program on January 1, 2002.

**Ketamine: Unlawful Possession**

Ketamine, an anesthetic used by veterinarians, is a hallucinogen very similar to PCP. On the street, ketamine is known as "Special K" and has become a new and popular "designer" drug. Ketamine is showing up in bars and all-night dance parties, "Raves", popular with teenagers and young adults. An overdose can starve the brain of oxygen and stop the heart. Ketamine is extremely difficult to manufacture, therefore veterinary offices and clinics are the targets of robberies and burglaries.

Ketamine is a Schedule III controlled substance, illegal to possess for sale or sell ketamine. However, ketamine possession is exempt from criminal sanction and penalty. Criminalizing possession enables law enforcement to investigate supply sources, thereby reducing the number of robberies and burglaries of veterinary offices.

***AB 1731 (Bowler), Chapter 358,*** makes the unlawful possession of ketamine a misdemeanor, punishable by up to six months in the county jail and/or a fine of up to $1,000.

**Personal Income Taxes: Contributions: D.A.R.E. California Fund**

All but one of California's 11 voluntary income tax check-off contribution funds have sunset dates; all but four [including the existing Drug Abuse Resistance Education (D.A.R.E.) Fund check-off] are required to generate at least $250,000 annually in order to remain on the tax form for the succeeding year.

According to the Franchise Tax Board (FTB), the D.A.R.E. check-off raised approximately $140,000 in 1995-96 and $145,000 in 1996-97.

***AB 1733 (Machado), Chapter 654***, extends the D.A.R.E. state income tax form check-off sunset date from January 1, 1999 to January 1, 2004 and appropriates money in the D.A.R.E. Fund to D.A.R.E. California. Specifically, this new law:

- Requires the D.A.R.E. check-off to receive a minimum level of contributions annually (i.e., $250,000, indexed annually for inflation).

- Appropriates the balance of funds remaining in the D.A.R.E. Fund as of July 31, 1998 to the Controller for disbursement to D.A.R.E. California (an

amount equal to $313,850.21). This money represents funds donated by taxpayers but not yet transmitted to D.A.R.E. California.

- Creates statutory authorization allowing the Controller to annually disburse money in the D.A.R.E. Fund to D.A.R.E. California after the FTB and the Controller are reimbursed for their costs to administer the D.A.R.E. Fund. This authorization is effective on January 1, 1999.

## Alcohol and Drug Treatment for Adolescents

Families are in need of assistance to manage and treat adolescent and youth problems associated with drug and alcohol abuse. The California School Nurses Organization (CSNO) argues that early identification of drug use can lead to early intervention and treatment. Additionally, CSNO argues that arresting large increasing numbers of youngsters for drug use has no apparent effect on prohibiting adolescents from using and abusing alcohol and drugs. The Union of American Physicians and Dentists (UAPD) argues that many young people who commit crimes are under the influence of alcohol and drugs and have serious substance abuse problems.

***AB 1784 (Baca), Chapter 866***, creates the Adolescent Alcohol and Drug Treatment and Recovery Program. Funding for this new law has been made to the Department of Alcohol and Drug Programs (DADP) pursuant to Schedule (a) of Item 4200-101-0001 of the Budget Act of 1998. Specifically, this new law:

- Requires the DADP to establish community-based alcohol and drug recovery youth programs in collaboration with counties and local law enforcement to intervene and treat alcohol and drug problems.

- States findings regarding the extent of substance abuse in California and the United States.

- Requires the DADP to convene the OCJP, California Youth Authority, Managed Risk Medical Insurance Board, Department of Education, Department of Social Services, and other agency representatives the DADP deems appropriate to collaborate on AB 1784's implementation.

## Controlled Substances: Reporting Requirements: Physicians

According to the Attorney General, a 1985 statute [AB 2401 (Filante)] repealed the general requirement for physicians to report narcotic prescriptions to the Department of Justice (DOJ). Inadvertently, one code section was left in place.

***AB 1819 (Takasugi), Chapter 172***, eliminates a requirement that physicians prescribing controlled substances in the treatment of addicts must report prescriptions to DOJ.

## Controlled Substances: Penalties

Current law provides that any person convicted of the manufacture of a controlled substance and illegally disposing a chemical used in the manufacture of a controlled substance in violation of any law hazardous waste disposal law is required to pay a monetary fine to cover hazardous waste disposal clean-up costs.

Many chemicals used in the illegal manufacture of methamphetamine are hazardous materials, requiring Department of Toxics or local hazardous response team response. Consolidating court actions against convicted drug manufacturers violating any laws relating to controlled substances and disposal of illegal hazardous chemicals allows counties to efficiently recover clean-up costs.

> ***AB 2369 (Wayne), Chapter 425,*** requires that any person convicted of the manufacture, sale, possession for sale, possession, transportation or disposal of any controlled substance in violation of any law to pay a penalty equal to the cost incurred in removing and disposing of any hazardous substance; if such costs are incurred, the prosecuting attorney is requested to seek recovery of those costs.
>
> This new law also provides for a 15-year sentence enhancement in state prison for any person convicted of the manufacture of methamphetamine where the substance exceeds 105 gallons of liquid or 44 pounds of solid substance.

## Controlled Substances: Public Libraries

In 1994, Assembly member Terry Friedman authored legislation giving local governments the authority to create "Drug-Free Zones" in public parks and beaches, an additional tool in an effort to provide recreational areas for children free from the threat of drugs and drug trafficking.

While no statistics are available on the actual deterrent value of drug-free zones, local governments have expressed a desire to continue and expand the program in light of recent reductions in funds to pay for public safety officers.

> ***AB 2569 (Kuehl), Chapter 723,*** amends existing law making public libraries drug-free zones and defines "public park" to include a public swimming pool and public youth center. This law sunsets January 1, 2003.
>
> This new law was an urgency measure and became effective on September 22, 1998.

## Healing Arts: Dispensing Drugs

Individuals acting as physicians or pharmacists and prescribing medications without any training can create serious problems resulting in deaths and serious illnesses.

Individuals without licenses are selling prescription drugs, including many forms of antibiotics, which has the cumulative effect of reducing immunity and leading to the inability of licensed health care practitioners to treat common illnesses.

***AB 2687 (Gallegos), Chapter 750,*** permits a local health officer to take action against a person dispensing or furnishing prescription drugs without a license, including ordering the closure of a business operated by such person upon a second offense, and increases misdemeanor penalties for this offense. Specifically, the new law:

- Permits a local health officer to take action against a person dispensing or furnishing prescription drugs, as defined, or controlled substances, as defined, without a license. This action includes, but is not limited to, the following:
  - Receiving and investigating complaints from the public. This law specifies that in conducting any investigation, the local health officer is accompanied by a licensed pharmacist and provides the Board of Pharmacy, or any other state agency with jurisdiction, with a copy of all complaints received;
  - Issuing a cease-and-desist order to any person furnishing prescription drugs without a license and enlisting the aid of local law enforcement to confiscate any drugs possessed by the person without a license; and
  - Ordering the closure of any business operated, managed or owned by the person engaging in the dispensing of prescription drugs without a license if the person has already been convicted of a misdemeanor for the same offense, with specified due process procedures for a person whose business is ordered closed.
- Specifies that misdemeanor penalties for a person who dispenses or furnishes prescription drugs without a license not exceed one year in county jail or a $5,000 fine, or both, for a first offense, and not exceed one year in county jail and/or a $10,000 fine for a second offense.
- Makes legislative findings and declarations that the dispensing or furnishing of prescription drugs without a license poses a significant threat to the public health, safety and welfare, and that extraordinary measures are needed to control this problem.

This law was an urgency statute and became effective September 23, 1998.

## Controlled Substances: Prescriptions

California is one of only 11 states that require some type of triplicate prescriptions for Schedule II drugs. The other 39 states have removed or have never placed regulations that, in effect, severely restrict the legitimate practice of medicine. Moreover, most of the research conducted by Sendor and O'Connor and the American Medical Association (1996) concluded that in those states where no triplicate prescriptions were utilized, no significant problems exist. In addition, pharmacists who accept prescriptions are required to use their professional judgment and can refuse to dispense controlled substances.

***AB 2693 (Migden), Chapter 789,*** exempts Schedule II controlled substance prescriptions for patients with terminal illnesses from existing triplicate prescription form requirements. Specifically, this new law:

- Requires the physician prescribing controlled drugs be the same physician who determines the patient's terminal status.

- Specifies that terminal conditions are diseases not only terminal, but also incurable and irreversible.

## Controlled Substances: Public Park or Oceanfront Beach

Beach community law enforcement agencies effectively used a sentencing enhancement law to combat drug use and trafficking in parks and oceanfront beaches. However, this law recently expired due to a sunset provision.

***SB 1089 (Lockyer), Chapter 101,*** adds a one-year prison sentence enhancement for persons who sell or possess for sale, at a public park, oceanfront beach, or adjacent public parking lots and sidewalks heroin, phencyclidine (PCP), methamphetamine, cocaine or cocaine base. The enhancement must be pleaded in the charging document, and admitted by the defendant, or found true by the trier of fact. SB 1089 provides the enhancement may not be imposed in the event one of certain other enhancements is imposed relating to the sale of narcotics to minors, and sales near a school ground, playground, child care facility, church, synagogue, video arcade, or certain other locations where children are typically present. This law provides the court can strike the enhancement, and only applies if the city or county having jurisdiction over the park or oceanfront beach designates and signs the areas as a drug-free zone.

This new law contains a January 1, 2003 sunset clause and requires a report to the Legislature on the number of arrests and the disposition of each arrest in a "drug-free zone".

This law was an urgency measure and became effective on July 6, 1998.

## Controlled Substances: Iodine: Red Phosphorous

Iodine and red phosphorous are key chemical ingredients used in the production of methamphetamine. While individuals purchasing these chemicals are required to provide specific identification information at the time of purchase, there are no limits on the quantity of iodine or red phosphorous an individual can purchase at a given time. As result, drug dealers can easily purchase large quantities of these precursor chemicals.

***SB 1539 (Solis), Chapter 305,*** prohibits selling or buying more than eight ounces of iodine or four ounces of red phosphorous in any 30-day period. Specifically, this new law:

- Prohibits manufacturers, wholesalers, retailers, or other persons from selling more than eight ounces of iodine or four ounces of red phosphorous to an individual in any 30-day period.

- Prohibits an individual from purchasing more than eight ounces of iodine or four ounces of red phosphorous in any 30-day period.

- Exempts from these quantity and time period provisions the sale of red phosphorous or iodine to a person or business licensed or regulated by state or federal law with respect to its purchase or use of red phosphorous or iodine.

- Makes it a misdemeanor to fail to comply with the quantity and time period restrictions on the sale or purchase of iodine or red phosphorous, punishable by up to six months in county jail and/or a fine of up to $1,000.

## Public Social Services: Drug Courts

Drug courts have to be funded.

***SB 1587 (Alpert), Chapter 1007,*** establishes the Drug Court Partnership Program (drug program). Specifically, this new law:

- Establishes the Drug Court Partnership Act and requires the drug program be administered by the DADP for the purpose of demonstrating the cost effectiveness of drug courts.

- Requires the DADP to design and implement the drug program with the concurrence of the Judicial Council.

- Specifies that the drug program awards grants on a competitive basis to counties that develop and implement drug court programs likely to provide the

greatest public safety benefit and be most cost-effective in reducing state and local costs.

- Specifies that the DADP, in collaboration with Judicial Counsel, awards program grants providing funding for four years, subject to appropriation in the Budget Act. This law prohibits the use of funds to supplant existing programs.

- Requires the county alcohol and drug program administrator and the presiding judge to submit a multi-agency plan identifying resources and strategies for providing an effective drug court program in order to be eligible for the program grant.

- Requires that no grant be awarded unless the applicant makes available resources in an amount equal to at least 10 percent of the amount of the grant in Years One and Two, and 20 percent of the amount of the grant in Years Three and Four.

- Requires the DADP, with concurrence from Judicial Counsel, to establish minimum standards, funding schedules, and procedures for awarding grants.

- Requires the DADP, in collaboration with Judicial Counsel, to create a program evaluation design that assesses the Program's effectiveness.

- Requires the DADP, together with Judicial Counsel, to develop an interim report submitted to the Legislature on or before March 1, 2000, and a final analysis of the program on or before March 1, 2002.

- States legislative intent for $8 million to be appropriated in the Budget Act in each fiscal year, from 1999-00 through 2002-2003, for the program. This law allows five percent of the amount to be available to the DADP to administer the program.

- Transfers from the General Fund $8 million for the program.

- Clarifies that this law applies to courts operating under Penal Code Sections 1000 through 1000.4 and applies to any defendant who entered a plea of guilty and is on active probation.

# CORRECTIONS

## Incitement to Riot: Correctional Facilities

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Correction personnel have insufficient tools to maintain order and safety due to jail overcrowding and the sophistication of gangs. Additionally, the increase of incarcerated serious offenders with “second” and “third strikes” has increased the problem.

> ***AB 164 (Knox), Chapter 558,*** provides that any person convicted of inciting a riot in the state prison or in the county jail that results in serious bodily injury is punished by up to one year in the county jail or by imprisonment in the state prison for a term of 16 months, 2 or 3 years.

## Correctional Peace Officers Standards and Training

California's overcrowded prisons are becoming increasingly violent. Correctional officers need to perform their jobs safely and effectively and need increased training and higher standards.

Greater public oversight of Department of Corrections’ (CDC) operations is needed. The Inspector General’s (IG) role, the Correctional Agency's "watchdog", should be expanded to include more frequent and public audits.

> ***AB 271 (Villaraigosa), Chapter 762,*** increases standards and training for correctional peace officers, and requires that state internal affairs investigators also complete training and adhere to specified standards. Specifically, this law:
>
> - Expands the IG's oversight responsibility to ensure that CDC and the California Youth Authority (CYA) internal affairs investigations are conducted credibly.
>
> - Provides increased training and standards for CDC and CYA internal affairs investigators, and requires that they submit to background checks.
>
> - Provides for increased standards and training for CDC, CYA, and Department of Mental Health peace officers.
>
> - Requires that prospective applicants be free of emotional or mental conditions adversely affecting the exercise of his or her duties as a peace officer.
>
> - Requires correctional peace officer apprentices to serve a period of probation for 1,800 hours or 12 months, whichever is longer; and requires that a cadet complete an approved course of training prior to being assigned as a correctional peace officer.

- Authorizes the Commission on Peace Officers Standards and Training (POST) to establish a course in carrying and using firearms for correctional peace officer apprentices.

**Home Detention: Escape**

Current law does not apply to a person placed on Electronic Home Monitoring System and breaks his or her bands to escape. Such a person cannot be charged and no punishment can be imposed except a probation violation; such a person cannot be charged with felony escape.

***AB 531 (Knox), Chapter 258*****,** provides that any person participating in a home detention or home monitoring program and fails to return to his or her place of confinement can be charged with escape and is subject to the following penalties:

- Any person convicted of a misdemeanor confined in a home detention program who escapes is punished by one year and one day in the state prison or by up to one year in the county jail.

- Any person convicted of a felony confined in a home detention program who escapes is punished by imprisonment in the state prison for a term of 16 months, 2 or 3 years in the state prison or in the county jail for up to one year, served consecutive to his or her present term of confinement.

**Corrections: Prison Construction**

Penal Code Section 7000 contains mitigation language inconsistent with the Master Plan and should be amended to only include pre-1997 Master Plan provisions.

Existing law should specify that mitigation is only provided for new permanent prison housing facilities, temporary beds included in the Emergency Bed Program, and any future emergency beds.

***AB 570 (Battin), Chapter 593,*** deletes provisions in existing law that provides for mitigation funding for increases in the number of inmates in existing facilities; and specifies that mitigation funding is provided to local government as a result of the construction of new permanent prison housing, the activation of temporary beds as part of the Emergency Bed Program, and future emergency bed expansion if the funds are appropriated in the annual Budget Act.

**Department of Corrections: Disabled Inmates** Table of Contents

The CDC has been involved in a class-action lawsuit regarding the extent to which the Federal Americans with Disabilities Act applies to correctional facilities.

In order to avoid a Federal Court order on the CDC, critical construction should proceed to ensure that disabled inmates are housed safely with access to the same services and programs as all other inmates.

Projects should include adjusting doorways and walkways; adjusting toilet, sink and bed height; building ramps; installing handrails and anti-slip flooring; and installing video and audio signals for deaf and blind inmates.

> ***AB 986 (Migden), Chapter 28,*** authorizes an appropriation of $6.5 million from the General Fund to the CDC for capital outlay projects to implement the statewide Disability Placement Program and modify facilities to accommodate disabled inmates.

**Corrections: Prisoner Detention**

Due to delays and prison overcrowding, counties have paid to house CDC inmates. The State has never compensated counties for housing these inmates; county costs are estimated between $50 and $100 million.

> ***AB 1655 (Wright), Chapter 767,*** requires reimbursement to counties for jail costs incurred when detaining specified inmates prior to transport to a state prison.

**Public Safety Officers**

The Peace Officers Procedural Bill of Rights Act, enacted in 1976, should be updated. Specifically, the definition of "lie detectors" must be modified to include such new electronic devices as "voice stress analyzers".

> ***AB 2293 (Scott), Chapter 112,*** provides that for the purposes of the Peace Officers Procedural Bill of Rights Act a "lie detector" is defined to include the latest electronic deception devices. Specifically, this law defines "lie detector" as a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

**Preventing Parolee Crime Program**

An estimated 75 to 80 percent of prisoners have histories of substance abuse; treatment is only available for about 2 percent of those prisoners. The most frequent reason a parolee is returned to prison is drug-related; however, 12 percent of parolees need treatment.

Successful programs preventing crime and reducing related costs should be permanent. The Preventing Parolee Crime (PPC) Program has saved the State $74 million and

11,000 prison beds over the past five years and is expected to save $2 to $3 for every additional State dollar.

***AB 2321 (Knox), Chapter 526,*** codifies and expands the PPC Program and requires the CDC to develop a plan for the incorporation of all prisoners and parolees with substance abuse problems into treatment programs. Specifically, this law:

- Appropriates $3.05 million from the General Fund to the CDC to expand and evaluate the PPC Program.

- Makes the PPC Program permanent within the CDC and requires the program to include, at a minimum, residential and non-residential multi-service centers, literacy labs, drug treatment networks, and job placement assistance for parolees.

- Requires the CDC to provide the Legislature on or before January 1, 2004 with an independent report on the PPC program effect on additional parole units on public safety, parolee recidivism, and prison and parole costs.

- Requires the CDC to sample several parole units which have added the PPC Program and examine the PPC Program's impact on the supervision, control, and sanction of parolees in those parole units. The results are compared with a group of parole units not having the PPC Program. The report must be available for immediate review by the Legislative Analyst's Office.

- Gives the CDC and the Parole Authority the authority to assign a conditionally released or paroled prisoner to the PPC Program in lieu of suspension or revocation of parole. This law prohibits the Parole Authority from assigning a parolee to the PPC Program if he or she has committed a parole violation involving a serious or violent felony.

- Requires the CDC to develop and submit a plan using existing resources to the Legislature by December 31, 2000 for the proper treatment of all prisoners and parolees with substance abuse problems by January 1, 2005.

**Corrections: Detainees: Prohibited Employment**

Like other states, California has a prison-work program allowing inmates to perform useful work. However, some contracts with private businesses provide inmates access to private and confidential customer information.

Recently, the national media have reported stories regarding prisoners given access to personal information through prison work programs. One Texas prison program allowed felons to enter the names and addresses of people who had filled out consumer surveys into computers and a convicted rapist began sending intimidating letters to a

woman about her personal responses. In California, a Ventura inmate was allowed to make airline reservations as part of a prison-work program and fraudulently used a customer's credit card number to charge $9,000 worth of merchandise.

***AB 2649 (Figueroa), Chapter 551,*** precludes specified types of inmates from working in situations providing access to personal information and requires other inmates having access to personal information to disclose that they are confined before taking any personal information from any individual. Specifically, this new law:

- Provides none of this law's provisions apply to inmates or wards in employment programs or public service facilities where incidental contact with personal information may occur.

- Provides a juvenile only has to disclose he or she is a ward when asked.

- Provides any program involving the taking of personal information over the telephone by a juvenile ward is subject to random monitoring of his or her telephone calls and such programs must provide supervision at all times.

**Sex Offender Registration**

A sex offender required to register with local law enforcement should also be required to disclose his or her status if he or she applies for a volunteer or paid position placing the sex offender in contact with children.

Existing law permits a judge to declare, on or after a grant of probation, that a felony offense is a misdemeanor. In addition, judges are presently allowed to stay the execution of sentences pending appeal, in the court's discretion. A person convicted of a registerable sex offense should not be relieved of the responsibility to register because he or she has filed an appeal and the appeal's merits have not been decided.

Under existing law, a person required to register as a sex offender must register with law enforcement within five days of coming into the jurisdiction. Although these individuals are often monitored by state parole, they are not required to provide their parole agents with proofs of registration.

***AB 2680 (Wright), Chapter 960,*** precludes the court from relieving a person required to register as a sex offender from the responsibility to register, expands the list of specified sex crimes for which the CDC is required to give notice as to the scheduled release of an inmate to law enforcement, and requires a parolee required to register as a sex offender to provide proof of registration to the parole authority within six days of release. This new law also provides that the six-day period for providing proof of registration may be extended in unusual circumstances precluding the parolee from meeting the deadline.

## Adult and Juvenile Offenders

Federal funding for local detention purposes needs to be secured.

***AB 2793 (Migden), Chapter 339*****,** provides that funds awarded to the state pursuant to the federal Violent Offender/Truth-in Sentencing Grant Program through federal Fiscal Year 1999-2000 be allocated by the Board of Corrections (BOC) to counties for construction and modification of local detention facilities. Specifically, the new law:

- Provides that the federal funds be used for construction and modifications of local adult detention facilities and to build or expand local juvenile correctional facilities.

- Stipulates that no more than 15 percent of the funds are available for adult facilities through competitive grants to counties.

- Declares exigent circumstances exist regarding the impact of increasing numbers of juvenile offenders on public safety and the BOC must develop necessary standards and procedures for allocating the federal funds at issue through competitive grants to counties.

- Requires a minimum 25-percent local match; restricts the in-kind portion of the minimum local match to 15 percent; and notes that the greater the local match, the higher the priority that the county be given for allocation of funds.

## Sex Offenders

The crime of child molestation warrants the strict supervision and surveillance of parolees.

***AB 2799 (Olberg), Chapter 550,*** declares the Legislature's intent to create a pedophile parole placement program and requires the Megan's Law CD-ROM to be updated on a monthly basis. Specifically, this new law:

- Declares the Legislature's intent to develop, in conjunction with information disclosed pursuant to Megan's Law, a pedophile parole placement program to protect children from registered sex offenders.

- Requires DOJ to update and distribute the CD-ROM containing registered sex offender information on a monthly basis to law enforcement.

## Corrections

When a small balance is left in a paroled inmate's trust account upon, the CDC sends a check to the inmate's parole office. Checks not collected are returned to the CDC

headquarters. The CDC should have a more cost-efficient method to liquidate these accounts.

In addition, when the amount of pre-imprisonment custody credits equals or exceeds a person's sentence, the inmate is deemed to have served his or her sentence including any period of parole and is not delivered to the CDC. Therefore, a person can be released from court and not subject to parole supervision.

> ***SB 295 (Rainey), Chapter 338,*** allows unclaimed inmate money of $5 or less in an inmate's trust account after he or she has been paroled to be placed in the CDC's Inmate Welfare Fund.
>
> This law also provides that if the amount of pre-sentence custody credits exceeds the term of imprisonment imposed, the court must deem the sentence served and order the defendant to serve a period of parole, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, and deletes provisions requiring a biennial report to the Governor.
>
> This law restores provisions which sunset on January 1, 1999 and allow a defendant serving time in an alternative program in lieu of imprisonment in the county jail; where statute requires a minimum mandatory custody period, time spent in these facilities qualifies to meet the minimum mandatory time requirements.

**State Property: Department of Corrections**

California's prison system will reach capacity by mid-2000. In addition, the number of parolees returned to custody exacerbates the capacity problem.

> ***SB 491 (Brulte), Chapter 500,*** provides authorization for the CDC to construct 1,000 prison cells in administrative segregation units at 10 prisons; contracts for 2,000 additional beds in community correctional facilities; operates a pilot program to assist drug-addicted female parolees; disposes of 290 acres of surplus state property near the Chino state prison; and implements a master plan for the land.
>
> This law authorizes the CDC to enter into contracts to provide space for an additional 2,000 state prison inmates in community correctional facilities, with each separate facility limited to an average capacity of 500 beds and a requirement for separate operation of each facility. Each contract must include an option for the state to purchase the facility; provide work or educational assignments for all inmates; and 1,000 beds must include substance abuse treatment programming.
>
> This law also authorizes the Department of General Services (DGS) to exchange, sell, or lease 290 acres of real property to the City of Chino for park

and recreation uses, including the development of a golf course, as specified. The land must be used for the development and maintenance of a public park, public recreational uses, and open-space uses, including the development of a golf course. Any lease executed must not exceed 55 years, and uses of the land must be consistent with a memorandum of understanding negotiated between the CDC, DGS, and the City of Chino.

**Prisoners: Medical Testing**

The sunset date should be extended for the confidential medical testing of prisoners.

***SB 1827 (Monteith), Chapter 843,*** extends the sunset date for provisions relating to confidential medical testing of prisoners for acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV). This law authorizes the chief medical officer (CMO) to test for hepatitis and/or tuberculosis on a voluntary or involuntary basis. Specifically, this new law:

- Extends the July 1, 1999 sunset date until January 1, 2005 for provisions relating to confidential medical testing of prisoners for AIDS or HIV.
- Avoids unnecessary tests by allowing the CMO to order hepatitis and/or tuberculosis testing on a voluntary or involuntary basis of any inmate accused of "gassing" any officer or employee of the prison.
- Provides these decisions must be consistent with an occupational exposure as defined by the Center for Disease Control and Prevention.
- Provides the results of any examination or test must be provided to the officer or employee subject to a reported or suspected violation.
- Provides that any person performing testing, transmitting test results, or disclosing information in accordance with these provisions is immune from civil liability for any action undertaken in accordance this law.
- Clarifies the definition of "medically necessary" for protecting the health of an officer or employee who may have been subject to a violation, as defined.

**Office of the Inspector General**

In the analysis of the 1997-98 Budget Bill, the Legislative Analyst stated that the CDC does not have effective and efficient programs deterring personnel misconduct, investigating misconduct, or disciplining those violating departmental policies or the law.

The Office of the Inspector General (IG) needs to become a truly independent investigative office and complete timely and thorough investigations.

***SB 1913 (Ayala), Chapter 969,*** makes the Office of the IG an independent investigative agency. Specifically, this law:

- Specifies that the Office of the IG is independent and not a subdivision of any other governmental agency.

- Requires the CDC Director to expand the existing ombudsman program with specific focus on maximum-security institutions and requires a report to the Legislature outlining plan implementation.

- Provides that the IG is no longer housed and supported by the Youth and Adult Correctional Agency (YACA), and does not need the approval of the Secretary of the YACA to conduct an investigation or audit.

- Requires that the IG, in consultation with the Commission on Peace Officers Standards and Training, establish a certification and training program for all investigators under the IG's jurisdiction. Training must be completed within six months of employment.

- Requires that all internal affairs IG investigators and those employed by various correctional agencies successfully complete psychological screening examinations before being employed.

- Prohibits the IG and the various correctional agencies from hiring an internal affairs investigator directly or indirectly involved in any open internal affairs investigations.

- Specifies that the identity of any person supplying information to the IG who initiates a complaint cannot be disclosed without that person's written permission.

- Prohibits reprisals against any person who, in good faith, disclosed improper activities; requires all matters involving criminal conduct be referred to the proper prosecuting authority; and the Attorney General must be notified.

**Department of Corrections: Prerelease Program**

According to the Legislative Analyst, "With more than 159,000 inmates in the 33 existing state prisons, and continued rapid growth in the prison inmate population projected by the CDC, the state is expected to exhaust all available prison space sometime in the year 2000." In a May 1997 report, the Legislative Analyst's Office recommended the Legislature take a balanced approach to the problem - adding capacity to house additional prison inmates while adopting policies and programs reducing inmate population growth.

***SB 2108 (Vasconcellos), Chapter 502,*** amends and supplements the 1998 Budget Act to appropriate $174.609 million from the General Fund the CDC and the BOC for expanding training, treatment and assistance programs for inmates and parolees; constructing space for more state prison inmates; and funding state grant to local governments to address the problems of mentally ill offenders and juvenile crime. Specifically, this law:

- Appropriates $2.589 million for support staff for planning, designing, constructing, and activating administrative segregation housing units (an appropriation provided in Budget Item 5240-303-0001).

- Appropriates $71.52 million for capital outlay to the CDC for 10 statewide administrative segregation housing units, preliminary plans, working drawings and construction with specified provisions.

- Appropriates $27,000 for local assistance to the BOC with specified provisions: (1) the funds must be expended only for competitive, statewide grants to counties for the purpose of expanding or establishing a continuum of responses to reduce crime and criminal justice costs related to mentally ill offenders; (2) up to $2 million to counties for planning and development; (3) up to five percent of the funds may be transferred as specified for the oversight and implementation of statewide grants to counties; and, (4) sunsets on December 31, 2004.

- Makes the funding contingent on AB 2321 (Knox), Chapter 526, and SB 491 (Brulte), Chapter 500, being enacted and becoming effective on or before January 1, 1999.

This law contained an urgency clause and became effective on September 15, 1998.

## Joint Legislative Committee on Prison Construction and Operations

The Joint Legislative Committee on Prison Construction and Operations, which provides specific legislative oversight, should be re-established.

***SCR 67 (Polanco), Resolution Chapter 101,*** re-establishes the Joint Legislative Committee on Prison Construction and Operations, assuming primary responsibility for providing legislative scrutiny over prison construction and operations, and overseeing the bidding process for, and implementation of, all community correctional facility contracts. The committee terminates on November 30, 2000.

# COURT HEARING AND PROCEDURES

## Criminal Procedure: Testimony: Witnesses

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People with developmental disabilities are some of the most vulnerable members of society. A crime victim with a developmental disability is easily intimidated, especially when he or she must face the defendant again in court.

Accommodations should be made to assist people with development disabilities when participating in the judicial system. These accommodations do not infringe on a defendant's right to face his or her accuser and cross-examine the victim's testimony.

> ***AB 126 (Papan), Chapter 97,*** expands the list of crimes in which the taking of videotaped preliminary examination testimony is specifically authorized if the victim is either 15 years of age or younger or is developmentally disabled as a result of mental retardation to include assault with the intent to commit mayhem or certain sexual offenses, as well as annoying or molesting a child under age 18. This law also expands the list of crimes for which a court has the statutory discretion to accommodate a witness with a disability.
>
> This law adds assault with the intent to commit mayhem or certain sexual offenses, statutory rape, certain sexual offenses (rape, spousal rape and unlawful penetration by a foreign) committed in concert, and all attempts to commit any crime listed in statute to the list of offenses for which these special procedures may be used with a qualifying victim.
>
> Finally, this law requires the Judicial Council to report to the Legislature within two years on the frequency, use, and effectiveness of admitting videotape testimony by means of closed-circuit television.

## Trespass: Illegal Signs: Evidence

Sign pollution is a problem that bothers individuals and benefits only those indulging in fundamentally illegal business practice of posting advertisements on telephone poles, trees, buildings and other public and private property.

Recent events in the San Fernando Valley have brought this issue to the forefront. Concerned citizens tear illegal signs down by the hundreds, often making such sign removal a part of their normal courses of daily activity.

> ***AB 135 (Hertzberg), Chapter 192,*** specifies that identifying information on an illegally posted advertising sign may be used as evidence to establish the fact and creates an inference that the identified person or entity is responsible for the posting of the sign.

## Peace Officers: Warrantless Arrest

Under current law, if an officer has reasonable cause to believe a person is carrying a loaded, concealed weapon, the officer can make a warrantless arrest even if the offense did not occur in the officer's presence. However, an officer cannot make such a warrantless arrest for an offense that did not occur in the officer's presence and the offender is carrying a concealed unloaded weapon. Officers need to be able to make such an arrest to ensure public safety.

For instance, when a person is found carrying an unloaded concealed weapon at an airport security screening station, the only way to place the suspect into custody is for the screener to make a citizen's arrest. A screener is not compelled to make a citizen's arrest and airline and security company policy is not to make a citizen's arrest. The only recourse is for the responding officer is to confiscate the weapon and allow the suspect to continue.

> ***AB 247 (Scott), Chapter 224,*** permits a peace officer to make a warrantless arrest for a misdemeanor firearm offense occurring at an airport where the offender carried a concealed firearm without a permit in an area to which access is controlled by the inspection of persons and property not in the officer's presence and the officer makes the arrest as soon as he or she has reasonable cause to believe the violation occurred.
>
> The new law requires the concealable firearm violation to occur within an area of the airport controlled by the inspection of persons and property before the officer may make a warrantless misdemeanor arrest.
>
> The new law contains chaptering language to avoid conflicts with AB 1767 (Havice), Chapter 699, and SB 1470 (Thompson), Chapter 182.

## Mental Health: Disclosure of Records: Law Enforcement

During criminal investigations, law enforcement officers encounter psychiatric hospital staffs who refuse to release information about a patient without a court order. The inability to obtain the necessary information often lengthens an investigation and may result in potential suspects avoiding arrest. Currently, an offender can use a psychiatric hospital, or go from hospital to hospital, to elude police and jeopardize public safety.

> ***AB 302 (Runner), Chapter 148*****,** allows for the release of information as to whether or not a person is a patient in a mental health facility when a law enforcement officer lodges with the facility a warrant of arrest or an abstract of such a warrant showing that the person named in the warrant is wanted for the commission of a serious or violent felony.
>
> Information that can be requested and released is limited to whether or not the person named in the arrest warrant is presently confined in the facility. If the law

enforcement officer is informed that the person named in the warrant is confined in the facility, the law enforcement officer may not enter without first obtaining a valid search warrant or permission of the facility staff. AB 302 requires that this procedure be implemented with minimum disruption to health facility operations and patients.

## Grand Juries

Under existing law, in any criminal proceeding where a defendant is charged with the commission of specified sex offenses with or upon a minor under the age of 11, the court is required to take special precautions for minor's comfort and support and to protect the minor from coercion, intimidation or undue influence as a witness.

Additionally, at the trial or preliminary examination of a case involving specified offenses, a prosecution witness is entitled to the presence of up to two support persons. However, a witness testifying before the grand jury is not entitled to have any individual present to provide support.

***AB 377 (Baugh), Chapter 755***, allows a grand jury witness who is a minor in a proceeding involving specified sex offenses or child abuse to have, at the discretion of the prosecution, a support person present during the testimony. The support person chosen may not be a witness in the same proceeding.

## Testimony: Closed-Circuit Television

Placer County is approximately 153 miles in length, covering a region from Lake Tahoe to Roseville. There are multiple law enforcement agencies issuing citations and multiple court locations. Peace officers spend a great deal of time travelling to and from court appearances and are sometimes required to wait hours for five-minute court appearances. In addition, transporting defendants from location to location presents public safety risks.

***AB 635 (Oller), Chapter 356,*** provides for a pilot project for a peace officer's or defendant's closed-circuit television testimony under specified circumstances for infractions and misdemeanors, and allows an in-custody defendant to be arraigned via closed-circuit television for an infraction. Specifically, this new law:

- Limits the use of closed-circuit testimony otherwise allowed by this law to a Placer County pilot program.

- Requires that in infraction and misdemeanor trials, a defendant must consent to allow a peace officer to testify via closed-circuit television and the prosecution must consent to a defendant's request to so testify.

- Requires the presiding judge of the Placer County to submit a report to Judicial Council and the Legislature on or before January 1, 2001.

- Sunsets on January 1, 2002.

**Financial Records: Crimes**

California financial investigators and prosecutors need to be provided with the necessary tools to effectively investigate and prosecute financial crimes.

***AB 976 (Papan), Chapter 757***, allows specified peace officers to testify about hearsay before a grand jury, and changes the procedures for obtaining and disclosing specified utility, escrow, title and financial documents. This new law:

- Modifies the procedures under which a state or local agency may obtain financial records, and generally requires 10 days' advance notice so the customer can be notified or attempted to be notified prior to the records being received.

- Exempts from confidentiality provisions of the California Right Financial Privacy Act, the dissemination of financial information and records pursuant to a court order upon written ex parte application by a peace officer, under specified conditions relating to certain felony financial crimes; provides for eventual notice to the customer; provides for eventual public disclosure of the ex-parte application and any subsequent judicial order; and provides for immunity for the financial institution complying with an court order.

- Provides utility record, escrow record, or title record holders may voluntarily disclose or provide information to law enforcement upon request, expands the definition of "utility records," and requires law enforcement to eventually notify a customer where a court has ordered disclosure of the customer's records without initial notice to such a customer.

- Provides utility records, escrow records or title records must only be issued upon an ex-parte peace officer application showing reasonable cause to believe the information is relevant to an ongoing investigation of a felony financial crimes investigation, under specified conditions.

- Removes the presumption, with regard to court-ordered withholding of disclosure of the subpoenaing customer's financial records, that prompt notification is the rule and delayed notification the exception.

- Adds language to avoid chaptering out AB 2452 (Leach), Chapter 771, and makes other technical and conforming changes.

## Crime Victims: Criminal Procedure

Children who are the victims of serious or violent crimes are unable to give testimony out of the presence of the accused attacker via a closed-circuit television monitor.

> ***AB 1077 (Cardoza), Chapter 669*****,** authorizes the testimony of a child who is 10 years of age or younger and the victim of a violent crime to be taken in another place and communicated to the courtroom by means of closed-circuit television.

## Court Proceedings: Disqualification of a Judge

The ability of a party to exercise a peremptory challenge to disqualify the original trial judge when the judge is reassigned to hear the matter regardless of whether a peremptory Civil Procedure Code (CPC) Section "170.6" challenge had already been granted needs to be clarified.

Existing law currently authorizes a party to exercise one peremptory challenge to excuse a judge on the basis that the judge would, in some way, be prejudiced toward an involved party or attorney. In 1985, that provision was amended to permit a peremptory challenge to be made when the same trial judge is assigned for a new trial after reversal on appeal on the belief that the judge who reversed might prove to be biased against the party who successfully appealed the judge's ruling at the original trial.

However, the court noted in Matthews v. Superior Court of San Diego County (1995) that "nowhere in the amendment or in legislative reports prepared in connection with the amendment is there any mention of superseding the long-standing prohibition against filing more than one peremptory challenge in any one action of special proceeding." The court also noted that the only comment on the number of challenges found in legislative history was an Assembly Judiciary Committee bill analysis, which stated that " . . . this removal of a judge for prejudice would be limited to one uncontested challenge . . . ."

CPC Section 170.6 clearly authorizes only one peremptory challenge of a judge in any one action or proceeding. According to the State Bar, although CPC Section 170.1 authorizes a party to try to disqualify a judge from re-hearing a case after appeal, it is not clear whether a litigant who has already exercised a CPC Section 170.6 peremptory challenge can then exercise an additional challenge under CPC Section 170.1 (i.e., authorizing a challenge on the basis of cause). No pertinent case law on this issue exists.

Having been granted a CPC Section 170.6 peremptory challenge in a case does not rule out the ability of a party who filed a successful appeal to challenge the original trial judge if that judge is re-assigned to the same matter must be made clear.

The State Bar also comments that even if a party was permitted to challenge a judge under CPC Section 170.1 after exercising a peremptory challenge under CPC Section

170.6, CPC Section 170.1 challenges are not routinely granted. The State Bar notes that while CPC Section 170.6 challenges are automatically granted when requested, challenges for cause are discretionary and rarely granted.

***AB 1199 (Alby), Chapter 167,*** authorizes a party in a civil or criminal matter who successfully files an appeal to disqualify the judge assigned to hear the matter on remand if that judge heard the underlying matter. This right to make a peremptory challenge applies regardless of whether that party has previously exercised a peremptory challenge in the proceeding. The right to exercise this additional peremptory challenge applies only to the party who successfully files the appeal that results in the remand of the case to the trial judge.

## DNA and Forensic Identification Data Base and Data Bank of 1998

A more effective aid for identifying, apprehending and prosecuting criminal suspects; linking unsolved crimes; solving past crimes; and exonerating the innocent is needed. Law enforcement can use a data bank more consistently in solving crimes and quickly identify a repeat offender who commits a crime from biological evidence (hair, a fleck of skin, or blood) - the type of evidence commonly found at a crime scene.

***AB 1332 (Murray), Chapter 696,*** establishes the DNA and Forensic Identification Data Base and Data Bank Act of 1998 and adds legislative intent that the Department of Justice (DOJ) identify $500,000 from existing resources to fund the costs of implementing this law during the first six months of its operation. Specifically, this new law:

- Requires all laboratories, including the Department of Justice's DNA laboratories, contributing DNA profiles for inclusion in California's DNA data bank to be accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB).

- Requires each laboratory to submit to DOJ for review the annual report required by the ASCLD/LAB that document the laboratory's adherence to ASCLD/LAB standards.

- Requires DOJ to catalog all statistical or research information requests obtained from the DNA data bank.

- Provides that, commencing January 1, 2000, DOJ is required to submit an annual letter to the Legislature including specified information with respect to each request for information obtained from the DNA data bank.

- Expands the list of crimes in which samples must be taken from the data bank, including mayhem and torture.

- Provides that any person convicted of specified offenses and committed to state prison, county jail, any institution under the jurisdiction of the California Youth Authority (CYA) where he or she was confined or is granted probation, or is released from a state hospital, as specified, must provide two specimens of blood, a saliva sample, right thumbprints and a full palm print impression to that institution or, if granted probation, to a person as specified.

- Requires expunging a person's information and materials in the data bank when the underlying conviction or disposition has been reversed and the case dismissed, the defendant has been found factually innocent, the defendant has been found not guilty, or the defendant has been acquitted.

- Authorizes DOJ to dispose of unused specimens and samples.

- Provides California Department of Corrections' and CYA's duties and requirements under this law will commence on July 1, 1999.

- Revises legislative declarations and purpose and adds technical amendments.

**Criminal Procedure: Closed-Circuit Testimony**

The state has a legitimate interest in protecting the most vulnerable members of society and can do this without infringing on a defendant's rights. A minor sexual assault victim is often unwilling to appear in open court before the accused. Courts should have the option of using a closed-circuit television in order to protect such victims. At the same time, a defendant's complete Sixth Amendment protections must be ensured.

***AB 1692 (Bowen), Chapter 670,*** gives the judge discretion to allow a minor victim of sexual offenses 13 years of age or younger (rather than 10 years of age under prior law) to testify at trial or a preliminary examination, via closed-circuit television under limited circumstances where the court finds by clear and convincing evidence that the victim would otherwise be unavailable to testify.

**Criminal Procedure: Trial Date: Continuance of Proceeding**

Existing law does not allow for a brief continuance in a murder case when the deputy district attorney assigned to prosecute that homicide is engaged in another matter. As a result, complicated and sensitive cases must be "handed off", often at the last minute, to a deputy district attorney unfamiliar with the facts of the case. Complicated homicide cases should not be lost due to last-minute changes, putting public safety at risk. In addition, losing cases due to last-minute changes is an ineffective use of time and taxpayers' money.

***AB 1754 (Havice), Chapter 61,*** allows the court to continue a murder trial or hearing date for up to 10 court days where the prosecutor assigned has another

trial or hearing in progress, and requires the court to make reasonable efforts to avoid scheduling a prosecutor's murder trial when he or she has another trial set.

**Criminal Proceedings: Prosecutors: Recusals**

All sides in pending cases, particularly serious felony cases, would be benefited if recusal orders could be promptly reviewed by way of writ. Delays could be reduced to days or weeks.

***AB 1858 (Ackerman), Chapter 51,*** allows a district attorney (DA) and/or the Attorney General (AG) to seek expedited review by way of an extraordinary writ of a court ruling or order stating the DA has a conflict of interest and cannot continue to prosecute the case. This law also provides the order recusing the DA's office must be stayed pending any review.

**Grand Jury**

Civil grand juries should be able to seek legal advice directly from the AG's Office, rather than just from the local county counsel's office. Budgetary constraints on the county counsel's office and its connection to local political issues could impair its ability to give legal advice to the grand jury in a timely fashion.

***AB 1907 (Woods), Chapter 230,*** specifies that civil grand juries may receive legal advice from the AG. Specifically, this law:

- Authorizes the grand jury to seek advice from the AG.
- Clarifies that the grand jury is authorized to pass on to the succeeding grand jury any records, information or evidence acquired during its term of service, except any information relating to a criminal investigation or that could form the basis for an indictment.
- Requires the county clerk to forward a copy of the grand jury report and any response by a public agency to the State Archives, and requires the State Archivist to retain files described above in perpetuity.

**Sex Offenses: Evidence**

An accused rapist's trial must focus on relevant facts and evidence rather than the victim's character. Traditionally, rape has been a crime that placed more emphasis on the victim's behavior rather than the offender's behavior. The admission of evidence as irrelevant as the style of a victim's dress or the length of the victim's skirt could mitigate an alleged violent sexual criminal's guilt.

***AB 1926 (Wildman), Chapter 127,*** provides that in enumerated cases alleging sexual offenses, evidence of the way the victim was dressed at the time of the

crime is not admissible when offered by either party to prove consent, unless the court determines the evidence is admissible. This law also provides the "manner of dress" does not include the condition of the victim's clothing itself before, during, or after the commission of the offense. AB 1926 prevents findings of consent based solely on the manner of the victim's dress and ensures that a complaining witness is not blamed for an attack by irrelevant evidence regarding how the victim dressed.

## Public Utilities: Telecommunication Services: Household Goods Carriers

The California Public Utility Commission's (CPUC) enforcement proceedings of unlicensed household goods carriers need to be streamlined. As Public Utilities Code Section 5322 is currently implemented, CPUC staff must secure search warrants from magistrates in order to obtain subscriber information related to telephone numbers advertised by entities or individuals appearing to offer services as unlicensed household goods carriers. Subscriber information (such as the name of a provider, the name of a subscriber, and the location of service) is necessary to prepare documents required to obtain a magistrate's order to disconnect phone services.

***AB 1977 (Campbell), Chapter 361*****,** provides the CPUC with telephone records from unlicensed household goods carriers upon a magistrate's order. Only access to the subscriber's name and address can be demanded by CPUC upon a magistrate's order. A magistrate may only issue an order based on specified findings.

## Local Government Record Retention

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The California Public Records Act ensures that the public has access to documents and records of government entities. State law requires local agencies to keep court records, records affecting real property, and records which are evidence in pending litigation until they are no longer needed. In most cases, other government records must be kept for two years.

Local agencies may destroy certain recordings after 100 days. A local agency governing board and the agency's attorney must approve any destruction by cities, counties, cities and counties, public safety communications centers, and special districts.

Last year, the Legislature added recordings of routine video monitoring to the list of records that local agencies may destroy after one year and added radio and telephone recordings to the list of records that can be destroyed after 100 days [AB 820 (Brewer), Chapter 264, Statutes of 1997]. The 1997 law also authorized cities and city departments to create a procedure for destroying duplicate records less than two years old. The San Bernardino County Sheriff requested that the Legislature allow counties to create a procedure to destroy duplicate records.

***AB 1980 (Brewer), Chapter 466,*** allows the county board of supervisors, the head of a county-governed special district, and the head of a county public safety communications center to authorize the destruction of recordings of routine video monitoring after one year, and radio and telephone recordings after 100 days. This new law allows counties to create a procedure to destroy records less than two years old and defines “video recordings”. This law specifies recordings that are evidence in claims or litigation must be preserved until the claim or litigation is resolved.

## Domestic Violence Courts

Several California counties have established courts which hear only domestic violence cases in both the criminal and civil arena. The state should study the merits of these courts, as well as the effectiveness of domestic violence courts operating in other states, to ascertain whether domestic violence courts should be established in each of California's 58 counties. Some counties operating domestic violence courts include Butte, Los Angeles, Napa, Placer, Sacramento, San Diego and Yolo Counties. Some courts are strictly for criminal domestic violence matters and some dealt with civil domestic violence cases as well. Each court appears to have a different operational structure, which should be studied and evaluated.

***AB 2700 (Kuehl), Chapter 703,*** requires the Judicial Council to study the various domestic violence courts in California and in other states. AB 2700 requires Judicial Council to submit its study to the Legislature by March 1, 2000. Specifically, the new law:

- Requires Judicial Council to submit its report to the Legislature by March 1, 2000.

- Defines "domestic violence courts" as the assignment of civil or criminal cases involving domestic violence to one department of the superior or municipal court.

- Specifies that the study be a descriptive study of domestic violence courts and describe the policy and procedures used in domestic violence courts as well as an analysis and rationale for the common features of such courts.

## Criminal Procedure: Territorial Jurisdiction

Domestic violence, stalking, child abuse and molestation victims have a high propensity of being the repeat victims of the same criminal committing the same crime. The very nature of these crimes involves multiple jurisdictions. The ability to combine the trials of these crimes into one should be provided, reducing the number of trials where a victim must testify at and reducing the overall time the victim is involved in a trial.

***AB 2734 (Pacheco), Chapter 302,*** vests territorial jurisdiction for specified offenses, such as spousal rape and stalking, that occur in more than one territorial jurisdiction in any jurisdiction where at least one offense occurred if the defendant and the victim are the same for all the offenses.

Specifically, the new law vests territorial jurisdiction for specified offenses (including spousal rape, rape in concert, child abuse, spousal abuse, sodomy, lewd and lascivious conduct with a child, oral copulation with a minor, and stalking) that occur in more than one territorial jurisdiction in any jurisdiction where at least one offense occurred if the defendant and the victim are the same for all the offenses.

**Minors: Informants**

Coercion should not be used to persuade a minor to serve as an informant. More traditional law enforcement techniques should be employed when stopping drug trafficking or prosecuting drug dealers.

***AB 2816 (Baugh), Chapter 833,*** provides no peace officer or agent of a peace officer can use a person under the age of 13 years as a minor informant nor can such a person use a minor 13- through 17-years-old as a minor informant without a court order made after certain conditions are met, but allows the use of minor informants 13- through 17-year-olds to be used in connection with the Stop Tobacco Access to Kids Enforcement Act (Stop Act).

This law requires the court to find probable cause that a minor committed the alleged offense before a minor can be used as a minor informant and sets forth specific factors the court must consider before consenting to the use of a minor informant, including the maturity of a minor, the gravity of a minor's alleged offense, the safety of the public, the interests of justice, and whether the agreement is being entered into knowingly and voluntarily.

Finally, AB 2816 requires the court to advise a minor of the mandatory minimum and maximum sentence for the alleged offense and to disclose the benefit a minor may obtain by cooperating with a peace officer or agent before the minor can be used as an informant.

This law was an urgency measure and became effective September 25, 1998.

**Murder: Jurisdiction: Special Circumstances**

Under current law, if a serial killer commits murder in more than one county, he or she must be tried separately in each jurisdiction, resulting in astronomical and unnecessary costs for all involved parties. In addition to the waste of public resources, victims' families must testify repeatedly about the same crime in different trials.

***SB 469 (Rainey), Chapter 549,*** allows for the consolidation of murder charges into a single trial for a serial killer charged with murder in more than one county as long as the murders are connected in their commission.

This law provides that in a multiple murder special circumstance case, the jurisdiction for any of the murders charged is the county that has jurisdiction for one or more of the murders as long as the charged murders are "connected together in their commission."

## Juvenile Law

Recently, the California Supreme Court ruled that juvenile adjudications may be used as prior convictions for the purposes of the "Three Strikes" law and that decision has given viability to the use of such adjudications.

Existing law relating to the confidentiality of juvenile records makes it difficult to obtain, copy, and introduce in court the records of a juvenile adjudication. Further, existing law allows for the destruction of juvenile records when the subject of the records reaches the age of 38, preventing the use of these records in appropriate cases.

***SB 1387 (Karnette), Chapter 374,*** prohibits the destruction of juvenile records relating to the commission of certain specified offenses and provides for inspecting, copying, and introducing these records in court. Specifically, this new law:

- Prohibits the destruction of records of a juvenile 16 years of age or older at the time he or she committed a specified serious felony offense.

- Provides that when a prior conviction is alleged for the purposes of the "Three Strikes" law, notwithstanding any other provision of law, the parties are entitled to inspect, copy, and introduce into evidence the juvenile records of a juvenile 16 years of age or older found to have committed a specified serious felony for the purposes of proving that conviction.

- Requires that specified juvenile records are kept confidential and available for inspection and copying only by the court, jury, parties, counsel for the parties, and any other person authorized by the court.

- Provides that in the case of an acquittal, or if an enhancement is stricken, the court will order the records resealed.

## Criminal Procedure: Dismissal

An inconsistency in state law resulting from the passage of Proposition 115 should be corrected. Under existing law, a district attorney must file charges in Superior Court within 15 days of a defendant being held to answer in Municipal Court, and the charges

must be dismissed if the defendant is not brought to trial within 60 days of the filing. As a result, charges are generally filed a day or two before the defendant's arraignment in Superior Court so as not to begin the 60 days too early prior to arraignment.

Proposition 115 requires that Superior Court trials be set within 60 days of arraignments, rather than within 60 days of filing. This inconsistency should be eliminated by making the arraignment date the date from which a defendant's speedy trial rights begin, making it easier for courts and attorneys to determine the exact date a case must be brought to trial. All parties are aware of arraignment dates and do not necessarily know when charges are filed.

In addition, this change may encourage the early filing of charges which, under existing law, were generally delayed so as not to begin the defendant's speedy trial rights too far ahead of the arraignment.

This change does not cause defendants to spend additional time in custody as trials are set well within the 60-day limit to avoid dismissal.

> ***SB 1558 (McPherson), Chapter 98,*** requires a court to order an action dismissed when a defendant is not brought to trial within 60 days of the defendant's arraignment in Superior Court.

**Prisoners: Testimony**

Having inmate witnesses testify in certain legal proceedings without leaving the security of a locked correctional facility enhances public safety, reducing the risk of inmate escapes and assaults on peace officers. According to the Los Angeles County Sheriff, interaction among gang members allows them to "collect intelligence from various prisons, construct their battle plans, order hits, distribute narcotics, and order race-related confrontations in the jails and state prison system."

Additionally, greater use of video testimony among inmates reduces transportation costs and the need for fully staffed courtroom holding facilities.

> ***SB 1728 (Thompson), Chapter 122,*** allows a court to order an incarcerated witness to testify in certain legal proceedings, including preliminary hearings and civil and criminal trials, via two-way electronic audio-visual communication. This law provides that in criminal trials, audio-visual testimony can only be used upon a waiver by the defendant of his or her constitutional right to compel the physical presence of the witness. SB 1728 provides that no inducement can be offered nor any penalty imposed in connection with a defendant's consent to allow a witness to testify via closed-circuit television.

## Criminal Procedure: Appeals by the People

Courts have the authority to dismiss a criminal case after a jury returns with a unanimous verdict of guilty and also have the authority to dismiss only some of the allegations contained in a charging document, such as a complaint, information or indictment.

However, as in the federal system, the People should have the right to appeal a dismissal to a higher court. The practical effect of denying appeals in this instance is that rulings clearly erroneous are permitted to stand. For fairness to be achieved, there must be standards, know by all, for conducting trials. Appellate review enables the judicial system to hold the lower courts up to the maintenance of these standards. Without this review, trial judges would decide constitutional issues and there is no sanction to assure either uniformity or correctness of trial court decisions. Thus, without appeals, there would be continued opportunities for unfair proceedings.

> ***SB 1850 (Schiff), Chapter 208,*** provides the People may appeal from an order setting aside all or any portion of an indictment, information, or complaint; an order sustaining a demurrer to all or any portion of the indictment, accusation, or information; and an order or judgment dismissing or otherwise terminating all or any portion of the action including such an order or judgment after a verdict or finding of guilty or an order or judgment entered before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

## Arrest Warrants: Electronic Mail

Law enforcement's need for a warrant often occurs during times that do not coincide with a court's normal hours of operation. In these instances, law enforcement agencies, including local police departments and county sheriffs, must contact judges at home in order to obtain the authorization needed to secure search or arrest warrants.

Current law permits requests for warrants, which can consist of a declaration and other supporting documentation, including lengthy witness statements and affidavits, to be sent to judges at their homes using facsimile machines. Although the use of facsimile machines for after-hour warrant requests has been helpful to both judges and law enforcement personnel, lengthy faxes can be time-consuming and are prone to problems such as missing pages and poor or illegible reproductions.

In addition, many judges do not have fax machines at home.

E-mail transmission is not only more convenient, but permitting its use reduces the time involved in transmitting warrant documentation and permits judges more time to review and decide whether to issue warrants. Further, turn-around time for law enforcement personnel working on time-critical criminal investigations would be improved.

***SB 1970 (Schiff), Chapter 692,*** authorizes the magistrate to take a written declaration in support of a warrant of probable cause for an arrest via electronic mail (e-mail) under specified conditions, and to take the oral statement of the person seeking the warrant or any witness that he or she produces by using the telephone and e-mail, as specified.

**Interpretation of Criminal Provisions**

Current legislative drafting practices have led to a proliferation of either verbose descriptive language or numeric only cross-references within codes. This practice has not served the public or criminal practitioners well.

The Public and members of the criminal justice system are not given adequate notice as to what offenses are and are not covered without doing extensive research. A cross-reference to another section should include the descriptive information enabling a reader to know whether the cross-reference is relevant.

***SB 2061 (Rainey), Chapter 162,*** provides that in cases of ambiguity or conflict in interpretation between descriptive language and the provisions contained in a code section, the code section takes precedence over the descriptive language.

# CRIME PREVENTION

## Alcohol and Drug Treatment for Adolescents

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Families are in need of assistance to manage and treat adolescent and youth problems associated with drug and alcohol abuse. The California School Nurses Organization (CSNO) argues that early identification of drug use can lead to early intervention and treatment. CSNO argues that arresting increasingly large numbers of youngsters for drug use has no apparent effect on prohibiting adolescents from using and abusing alcohol and drugs. The Union of American Physicians and Dentists argues that many young people who commit crimes are under the influence of alcohol and drugs and have serious substance abuse problems.

***AB 1784 (Baca), Chapter 866,*** creates the Adolescent Alcohol and Drug Treatment and Recovery Program. Funding for this new law has been made to the Department of Alcohol and Drug Programs (DADP) pursuant to Schedule (a) of Item 4200-101-0001 of the Budget Act of 1998. Specifically, this new law:

- Requires the DADP to establish community-based alcohol and drug recovery youth programs in collaboration with counties and local law enforcement to intervene and treat the problems of alcohol and drugs among youth.

- States findings regarding the extent of substance abuse in California and the United States.

- Requires the DADP to convene the Office of Criminal Justice Planning, California Youth Authority, Managed Risk Medical Insurance Board, Department of Education, Department of Social Services, and other agency representatives DADP deems appropriate to collaborate on implementation of this law.

## Sex Offenders

The crime of child molestation warrants the strict supervision and surveillance of parolees.

***AB 2799 (Olberg), Chapter 550,*** declares the Legislature's intent to create a pedophile parole placement program and requires the Megan's Law CD-ROM to be updated on a monthly basis. Specifically, this new law:

- Declares the Legislature's intent to develop, in conjunction with information disclosed pursuant to Megan's Law, a pedophile parole placement program to protect children from registered sex offenders.

- Requires the Department of Justice to update and distribute the CD-ROM containing registered sex offender information on a monthly basis to law enforcement.

## Insurance Fraud

The Senate Insurance Committee's 1997 hearing report on health care fraud found that the privately funded health care market, particularly managed care, operates mostly unchecked. The report also cites the United States Government Accounting Office's (GAO) estimate that $1 of every $10 spent on public insurance programs is lost to fraud. Prosecutors report that managed care is vulnerable to various forms of fraud, including enrollee, marketing, and plan fraud. The Department of Insurance states that health care fraud in California costs insurers, the state, and policyholders an estimated $10 billion annually.

***SB 956 (Rosenthal), Chapter 837,*** requires every health care service plan to establish an anti-fraud plan, as specified, required to be submitted to the Department of Corporations no later than July 1, 1999. This law also requires the plan to make an annual report on its efforts to deter, detect, and investigate fraud, as specified, and to report cases of fraud to a law enforcement agency. A willful violation of these provisions by a health care service plan is a crime.

## After-School Programs

Current law allows school districts to provide before and after school day-care programs for pupils in Kindergarten through Grade 9. Last year, AB 326 (Ortiz), Chapter 917, Statutes of 1997, encouraged the development of before- and after-school programs particularly aimed at improving student literacy. That law provided a funding mechanism and guidelines for the establishment of school-based, school age before- and after-school programs. The 1998-99 Budget Bill contains $3.5 million in base funding to continue this program.

***SB 1756 (Lockyer), Chapter 320,*** establishes, in combination with AB 2284 (Torlakson), Chapter 318, and AB 1756 (Ortiz), Chapter 317, the After School Learning and Safe Neighborhoods Partnerships Program for after-school partnerships at elementary, middle and junior high schools. The after-school programs offer a safe environment where students benefit from educational enrichment, tutoring, homework assistance, and recreational activities. Over 60,000 students, Kindergarten through Grade Nine, can be served through this effort. Specifically, this new law requires:

- Programs to operate at the school site for three hours per day and at least until 6:00 p.m. on all school days. Local programs have the option of operating during the summer and vacation periods for a minimum of three hours per day. All students attending the school are eligible to participate in the program.

- Program funding awarded on a competitive basis. Priority is given to schools where at least 50 percent of the elementary and 50 percent for middle and junior high school students are eligible for free or reduced-price meals.

- Programs to develop their plans in a collaborative process that includes other governmental agencies, including city and county parks and recreation departments and community organizations.

- Programs to receive renewable incentive grants of up to $5 per day, per child, with a minimum grant of $75,000 per year for elementary schools and $100,000 per year for middle and junior high schools. Fifty percent of the funds provided for this program are reserved for elementary schools and the balance is for middle and junior high schools.

- Programs to maintain a ratio of no more than 20 pupils to 1 staff. Staff must meet minimum qualifications, as specified.

- Programs to provide 50 percent cash or in-kind match from the local school district, governmental agencies, community organizations or local business for each dollar received in grant funds. The 1998-99 Budget includes an appropriation of $50 million from the Proposition 98 General Fund for this new program.

# CRIMINAL JUSTICE PROGRAMS

## Probation: Twelfth-Grade Education

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Literacy is one key to success. Today, 70 percent of all inmates housed in prisons do not possess basic reading, writing and math skills. As many of those convicted will eventually be paroled, such skills are necessary to play positive roles in communities. While not an overall solution to recidivism, literacy training provides a preventative and pro-active avenue addressing this issue.

> ***AB 743 (Washington), Chapter 498,*** establishes a pilot project to require a parolee or probationer to participate in literacy General Education Development programs designed to assist the person in obtaining a twelfth-grade education equivalency.

## Suspect Identification System: Digital Image

Digital photographic equipment enables the images of persons with criminal histories to be stored in a computer. The digital system captures five angles of a person's face, records physical characteristics, and generates three-dimensional color photographs. The photographs and other data can be transmitted to computers in police cars. Digital photographic equipment is less expensive to operate and maintain than the current "mug shot" system.

> ***AB 1681 (Sweeney), Chapter 72***, allows funds from the Automated Fingerprint Identification Fund to be used for digital photographic equipment and other suspect booking identification facilities.

## School Community Policing Partnership Act of 1998

Through school, policy and community agency coordination, schools can be safe and secure.

> ***AB 1756 (Havice), Chapter 317,*** establishes the School Community Policing Partnership Act of 1998 and creates the School Community Policing Partnership Grant Program, for which school districts and county offices of education are eligible to apply for and receive grants. Specifically, the new law:

- Changes the agency responsible for administering the grants from the Department of Education (SDE) to the School Law Enforcement Partnership (the SDE and Attorney General).

- Changes the maximum grant amount from $200,000 per year to a total of $300,000 over three years. This law also adds one-time, start-up planning

grants of $100,000 to the possible resources a district or county office may receive.

- Eliminates the requirement that grant applicants establish multi-agency juvenile justice coordinating councils.

- Eliminates the requirement that local law enforcement agencies provide matching funds in order for a school district to participate.

- Establishes deadlines for districts and county offices to submit applications and for the School Law Enforcement Partnership to administer grants.

- Deletes date-specific SDE deadlines to report to the Legislature on grant program evaluation results.

- Eliminates references to specific programs that grant funds may be used for.

- Prohibits grant recipients from using grant funds for school resource officer contracts.

- Adds school attendance and truancy rates to the data that school districts and county offices must collect to participate in the program.

- Changes requirements for participating in program.

## Computer Crime

Living in an age increasingly dominated by computers, law enforcement must keep up with criminals and their use of new technologies. New technologies affect the manner in which traditional crimes are being carried out. Stalkers are now using computers, faxes, and other means to invade the privacy and the rights of their victims.

***AB 2351 (Hertzberg), Chapter 826***, requires the Office of Criminal Justice Planning (OCJP) to conduct a feasibility study with respect to a state-operated center on computer forensics. This new law will be operative as SB 1796 (Leslie), Chapter 825, was also signed into law.

## Runaway Youth and Families in Crisis Project

Runaways, status offenders and at-risk youth who have not entered the juvenile justice system should be prevented from engaging in delinquent/criminal behavior. The number of at-risk families engaging in neglectful, abusive or criminal behavior needs to be reduced. While not all runaways enter the juvenile justice system, a high percentage of youth in the system have histories of committing status offenses that include running away.

***AB 2495 (Prenter), Chapter 1065,*** creates the Runaway Youth and Families in Crisis Project (Project) by establishing pilot projects involving private, non-profit organizations in the San Joaquin Central Valley, in northern California, and in southern California for a period of not less than three years. This new law provides for the Project to be funded by an amount appropriated in the annual Budget Act. Specifically, this new law:

- Establishes three-year pilot projects in one or more counties in the San Joaquin Central Valley, in one or more counties in northern California, and in one or more counties in southern California instead of creating projects in specified counties.

- Provides grants are awarded based on the proposal's quality, based on the documented need for runaway youth services, and based on organizations in localities that receive a disproportionate low share of existing federal and state support for youth shelter programs.

- Authorizes peace officers, as defined, to transport a runaway youth or youth in crisis to the nearest runaway shelter provided the youth agrees to the transportation.

- Requires projects to notify parents that their children are staying at project sites consistent with state and federal parent notification requirements.

- Requires private, nonprofit organizations to annually contribute a local match, in-kind contribution to the Project during the term of the grant award agreement.

- Requires Project funding must be provided to the extent funds are made available in the annual Budget Act and up to three percent of that amount must be transferred each year to OCJP.

- Provides that no applicant receives a grant in an amount that exceeds the total amount of funds appropriated in the annual Budget Act for this Project, minus the three percent for the OCJP, divided by the total number of counties participating in the project.

**Law Enforcement: Criminal Records and Correctional Officers**

The Federal Crime Control Act of 1990 statutorily mandates the already existing Attorney General's Advisory Committee on Criminal History Records Improvement. This requirement needs to be codified.

The Advisory Committee on Criminal History Records Improvement is a panel of representatives from the Department of Justice (DOJ), OCJP, local law enforcement, courts, prosecutors, corrections, probation and other related state agencies. The

Committee was created by mandate of the federal Crime Control Act of 1990 which requires each state allocate at least five percent of total funds received to improve the criminal justice records system. The goal is to create a statewide records system functional for all law enforcement throughout the state.

The Advisory Committee should be maintained and empowered and any exclusion of qualified department's representatives should be prevented. The Advisory Committee has proven itself valuable in giving local law enforcement a voice in the design of a statewide criminal records system. For that reason, the Committee's work should be recognized and perpetuated.

> ***AB 2506 (Battin), Chapter 841,*** requires the Attorney General to appoint an advisory committee, with a specified membership, to the California-Criminal Index and Identification (Cal-CII) system to assist in the ongoing management of the system regarding the operating policies, criminal records content, and records retention. The committee serves at the pleasure of the Attorney General and is required to meet twice annually.

**Repeat Offender Prevention Project**

Additional counties could be significantly assisted by the Orange County Probation Department's program, "the 8 percent solution". This program represents one of the most significant ways public agencies can dramatically reduce the social and public costs of juvenile crime. The program is being reviewed by public agencies across the country and featured on "60 Minutes" where the program is being adopted in a Florida county.

> ***AB 2594 (Wright), Chapter 327,*** revises and recasts Repeat Offender Prevention Project provisions, including specifying which counties the project applies and revising the selection criteria for the participation of minors. Specifically, this new law:
>
> - Provides that funding for the Project is contingent on an unspecified appropriation in the 1998 Budget Act.
>
> - Adds the Counties of Fresno, Humboldt, Los Angeles, Orange, San Diego, San Mateo, Solano, and the City and County of San Francisco to the existing Project, unless the board of supervisors of one or more of these counties adopts a resolution to not participate in the Project.
>
> - Provides a minor must be 15 1/2 years of age or younger to be eligible.
>
> - Provides funds be divided evenly among the participating counties.

## Vehicles: Drivers

The current combination of state law and federal regulations governing drug and alcohol testing contains loopholes allowing drivers with drug or alcohol abuse problems to continue to operate with commercial licenses.

Drivers can circumvent law by not disclosing their full driving histories to prospective employers. Additionally, a driver's past employer can contribute to the evasion of current testing requirements by failing to fully disclose the negative aspects of a former employee's driver safety record for fear of civil liability.

***AB 2597 (Murray), Chapter 772,*** establishes the California Drug-Free Commercial Truck and Bus Driver Task Force (Task Force). The Task Force is established for the purpose of evaluating and developing recommendations to improve the state's alcohol and drug policy for commercial truck and bus drivers. This new law:

- Declares the need to address the issue of "zero tolerance" for drug and alcohol use among commercial truck and bus drivers and declares the need for this to be accomplished in an expeditious manner in order for the Legislature to begin devising legislative solutions in the 1999-2000 Regular Session.

- Alters the make-up of the Task Force in the following manner: (1) removes Senate and Assembly Transportation Committee consultants; (2) adds California Association of School Transportation officials; and (3) adds the California School Employees Association.

- Provides that the Task Force has an additional year (January 31, 2000 instead of January 31, 1999) to submit a report containing recommendations to the Legislature.

- Extends the Task Force by one year (provisions sunset on January 1, 2001 instead of January 1, 2000).

## Gangs: Schools: San Fernando

On February 6, 1997, the Centers for Disease Control and Prevention issued a report confirming that the United States has the highest rate of childhood homicide, suicide and firearms-related deaths of any of the world's wealthiest nations. Nearly 75 percent of child murders in the industrialized world occur in the United States. In California, gangs and juvenile crime remain a significant problem.

In 1992, there were 52 gang-related homicides in the San Fernando Valley. The Communities in Schools of San Fernando Valley (CISSFV) program appeared to make a difference. The CISSFV program and its staff were key in establishing a gang peace

treaty. In the first five months of the truce, there was a 70-percent drop in gang-related homicides. In 1996, there were only 18 gang-related murders in the Valley - half the number of the previous year.

The CISSFV program should be studied and a model developed.

> ***AB 2650 (Cardenas), Chapter 484,*** requests a study on CISSFV program impact on gang violence and makes legislative findings regarding the program. $100,000 has been appropriated from the General Fund to California State University to conduct the study.

## Corrections: Juvenile Correctional and Youth Center Facilities

California juvenile facilities are seriously dilapidated.

> ***AB 2796 (Assembly Committee on Budget), Chapter 499,*** provides $100 million from the General Fund for the renovation, reconstruction, construction, completion of construction, and replacement of county juvenile facilities. AB 2976 requires the funds to be administered by the Board of Corrections (BOC), which funds county proposals by competitive grants. This new law authorizes the BOC to receive recommendations from an advisory committee appointed by the BOC. The county is required to match resources of at least 25 percent, with not less than 10 percent of those resources in cash. The new law provides $25 million in grants for local youth centers, as administered by the Department of the Youth Authority.

## Foster Care

Existing law provides for the reimbursement of foster care providers through the CalWORKs program, using a combination of federal, state, and county funds.

> ***SB 933 (Thompson), Chapter 311***, requires the State Department of Social Services to convene and preside over a community care facilities law enforcement task force to identify and recommend to the appropriate legislative committees specific statutory and regulatory changes to permit efficient and effective criminal prosecution of, and to permit efficient and effective civil recovery of public funds from, individuals associated with illegal activities surrounding public funds paid to providers for the care of and delivery of services to clients of community care facilities.
>
> This new law was an urgency measure and became effective on August 19, 1998.

## Continuous Electronic Monitoring: Parolees, Probationers, and Jail Inmates

Innovative projects such as continuous electronic monitoring make better use of limited resources in protecting the public. Continuous electronic monitoring deters individuals from committing further crimes as the possibility of apprehension increases significantly and provides an added means to determine the location of monitored persons who commit new offenses.

Currently, the Contra Costa Sheriff's Office operates an electronic home detention program. As effective as this program is, the current system can only alert program staff when a person has left home detention - it cannot track the person until he or she returns to the surveillance area of the home receiver equipment. Continuous electronic monitoring has that ability.

> ***SB 1420 (Rainey), Chapter 74,*** authorizes Contra Costa County to participate in an existing pilot project that uses continuous electronic monitoring to track probationers and persons released from jail.

## Mentally Ill Offender Crime Reduction Grants

California spends $315 million, a conservative estimate, per year on a cycle that shuffles mentally ill persons from county jails to city streets. Counties should be encouraged to develop a continuum of swift, certain and graduated responses to severely mentally ill offenders, including prevention, intervention and incarceration. Intervention strategies include establishing long-term treatment and stability for severely mentally ill offenders once these individuals are released from jail. Studies show that mentally ill persons who have treatment and stability do not commit crimes.

> ***SB 1485 (Rosenthal), Chapter 501,*** provides counties with the opportunity to compete for grants aimed at reducing early releases, costs, and crime associated with mentally ill offenders. This new law allows the BOC to award grants to motivated counties that develop a continuum of responses, as specified, and requires counties to provide at least 25 percent of the funds. Specifically, this law:
>
> - Requires, until January 1, 2005, the BOC to administer and award mentally ill offender crime reduction grants on a competitive basis to counties that expand or establish a continuum of swift, certain, and graduated responses to reduce crime and criminal justice costs relating to mentally ill offenders.
>
> - Requires the BOC, in consultation with the Department of Mental Health and the Department of Alcohol and Drug Programs, to create an evaluation design for the grant program assessing the effectiveness of the program in reducing crime and state and local criminal justice costs.

- Provides that to be eligible for a grant, each county must establish a strategy committee that includes specified persons.

- Requires the committee to develop a comprehensive plan for providing a cost-effective continuum of graduated responses, including prevention, intervention and incarceration, for mentally ill offenders.

- Requires the BOC to submit annual reports and a final analysis to the Legislature in 2004.

- Requires funding for the program to be provided, upon appropriation by the Legislature, in the annual Budget Act.

- Specifies legislative intent to appropriate $25 million for the grants in the 1999-2000 fiscal year, subject to the availability of funds.

- Makes legislative findings and declarations.

## Work Release: Rubbish and Weed Abatement Program

Existing law regarding the use of work release personnel for rubbish and weed abatement should be clarified consistent with current law governing work release prisoners.

***SB 1549 (Knight), Chapter 73,*** clarifies existing law regarding the use of work release personnel for rubbish and weed abatement. This law adds weed and rubbish abatement on public and private property, as approved by the sheriff or other authority, to the list of authorized activities for county correctional facility work release programs, consistent with current law governing work release for prisoners.

This law authorizes the performance by persons ordered to a work release program of weed and rubbish abatement by resolution of the board of supervisors, as defined in the Government Code for city governments, or by resolution or ordinance as defined in the Health and Safety Code related to county governments. Both codes provide that the weed and rubbish abatement occurs after procedures have been followed to notify the owners, lessees, occupants, of the need for abatement and those parties are allowed sufficient time to clean up the property. Local governments are authorized to recover the cost of abatement and counties may place liens upon the property to effect that cost recovery.

## School Safety

With campus safety becoming an increasingly important concern of California students, in recent years laws have been passed at both the state and federal levels which

require universities to prepare, post and copy for distribution their campus security plan, available crime prevention services, and campus crime figures.

However, there is no statute governing the coordination of services between campus police and local enforcement agencies. Whereas some universities have comprehensive agreements delineating jurisdiction lines and shared responsibilities, some campuses have nothing.

Given the importance of a rapid, coordinated law enforcement response to all violent crimes occurring on campus property, it is imperative that all major campuses have agreements in place with their local law enforcement agencies.

By designating which law enforcement agency has operational responsibility for the investigation of each Part 1 violent crime occurring on campus and delineating the specific geographical boundaries of each agency's operational responsibility, response procedures are in place when a violent crime occurs on a college campus. Moreover, agreements provide students and parents with an additional source of information on assessing campus safety efforts.

***SB 1729 (Thompson), Chapter 284,*** enacts the Kristin Smart Campus Safety Act of 1998 (Act) which requires any post-secondary institution receiving public funds to enter into a written agreement with local law enforcement agencies regarding the coordination and responsibilities for investigating on-campus violent crimes. Specifically, this new law:

- Requires the governing board of each specified post-secondary educational institution to adopt rules requiring its campus to enter into a written agreement with local law enforcement agencies designating each agency's responsibilities for investigating violent crimes and describing the geographical boundaries of that agency's operational responsibility.

- Requires local law enforcement agencies to enter into written agreements with college or university campus law enforcement agencies if there are college or university campuses located in their jurisdictions.

- Provides that the written agreements are available for public viewing by July 1, 1999 and requires each specified educational institution to provide the Legislative Analyst (LAO) with a copy of its written agreement on or before September 1, 1999.

- Requires the LAO, after examining the written agreements and related information, to report to the Legislature regarding implementation no later than March 1, 2000.

- Provides that this law does not effect existing written agreements between campus and local law enforcement agencies and does not limit the authority

of campus law enforcement agencies in providing police services to their campuses.

- Reaffirms that campus law enforcement agencies have primary authority for providing police and security services and investigating on-campus criminal activity, and states legislative intent to provide the public with clear information about the operational responsibilities of agencies that investigate on-campus crimes.

**Crime Prevention: Reimbursement to Local Government**

The California Constitution requires the state to reimburse local governments for costs incurred in complying with new programs or higher levels of service mandated by state law or regulation.

***SB 1844 (Thompson), Chapter 207,*** appropriates:

- $5.227 million from the General Fund to reimburse school districts for the Law Enforcement Agency Notifications Program. Costs associated with this program are incurred when school districts notify local law enforcement agencies of any unlawful acts by students related to the possession or sale of narcotics on school grounds.

- $2.614 million to reimburse counties or cities for the Crime Victim's Rights Program. Costs associated with this program are incurred when counties notify victims of specified violent felonies of pending pretrial dispositions.

- $16,000 to reimburse cities, counties, and special districts for the Threats Against Peace Officers Program. Costs associated with this program are incurred when governmental entities employing peace officers pay for actual and necessary moving expenses whenever credible threats exist.

- $8.347 million to reimburse cities and counties for the Prisoner Parental Rights Program. Counties that pay for costs associated with the transporting and housing of prisoners are reimbursed under this program.

- $4.114 million to cover costs incurred by local agencies for state-mandated programs not suspended by the 1997 Budget Act for July 1, 1997 through August 16, 1997.

- $62.823 million to cover specified deficiencies in prior-year appropriations. This appropriation includes $3.974 million for interest pursuant to Government Code Section.

- $17,561.6 which reimburses local agencies through June 30, 1998.

# CRIMINAL OFFENSES

## Felony Offenses

### Food Stamps: Fraud: Penalties

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Recent legislation mandates using electronic benefits transfer for food stamp benefits distribution. Fraudulent appropriation of these benefit transfers should be penalized.

***AB 131 (Ortiz), Chapter 903,*** requires that probation be denied for any person who commits fraud relating to food stamp distribution by means of electronic transfer of benefits where the loss exceeds $100,000.

This new law also provides that if a person is convicted of fraud relating to food stamps by means of electronic transfer of benefits, in addition and consecutive to the penalties for the violation, and the defendant has not been punished by an additional term under other provisions of law, the following penalties apply:

- An additional term of one year in the state prison if the electronic transfer of benefits fraud exceeds $50,000.
- An additional term of two years in the state prison if the electronic transfer of benefits fraud exceeds $150,000.
- An additional term of three years in the state prison if the electronic transfer of benefits fraud exceeds $1,000,000.
- An additional term of four years in the state prison if the electronic transfer of benefits fraud exceeds $2,500,000.

### Incitement to Riot: Correctional Facilities

Correction personnel have insufficient tools to maintain order and safety due to jail overcrowding and the increase in incarcerated serious offenders with “second” and “third strikes”.

***AB 164 (Knox), Chapter 558,*** provides that any person convicted of inciting a riot in the state prison or in the county jail that results in serious bodily injury is punished by up to one year in the county jail or by imprisonment in the state prison for a term of 16 months, 2 or 3 years.

## Counterfeit of a Mark: Punishment

Rapidly changing technology allows illegal duplicators of computer software and computer games to easily replicate large numbers of programs onto new storage media, e.g., CD-ROMs. Thousands of dollars of software can be copied onto one CD-ROM, then sold for a few hundred dollars. Because such “compilation CD's” can be made to order, it is difficult to apprehend such replicators. In addition, the number of registered marks involved may be insufficient for felony prosecution under Penal Code Section 350.

***AB 231 (Honda), Chapter 454*****,** conforms counterfeiting law with general theft provisions, and provides the punishments and fines for persons and corporations that intentionally sell, knowingly possess for sale, or willfully manufacture smaller quantities of items only apply if the value of such items does not exceed the threshold for grand theft (usually $400). Specifically, this new law:

- Eliminates the statutory requirement that the action be "without the consent of the registrant" before a crime is established.
- Applies regardless of whether possession of the articles was "at the point of sale" or not.
- Provides the lower penalties for an offense involving less than 1,000 articles only applies if the value of such articles is less than that required for grand theft (typically $400), as defined.
- Revises the definitions of "counterfeit mark", "registrant", "knowingly possess" and "retail or fair market value".
- Makes technical and conforming changes.

## Home Detention: Escape

A person placed on Electronic Home Monitoring System who breaks his or her bands to escape cannot be charged with felony escape and no punishment can be imposed except a probation violation.

***AB 531 (Knox), Chapter 258*****,** provides that any person participating in a home detention or home monitoring program and fails to return to his or her place of confinement can be charged with escape and is subject to the following penalties:

- Any person convicted of a misdemeanor confined in a home detention program who escapes is punished by one year and one day in the state prison or by up to one year in the county jail.

- Any person convicted of a felony confined in a home detention program who escapes is punished by imprisonment in the state prison for a term of 16 months, 2 or 3 years in the state prison or in the county jail for up to one year, served consecutive to his or her present term of confinement.

## Probation: Twelfth-Grade Education

Literacy is one key to success. Today, 70 percent of all inmates housed in prisons do not possess basic reading, writing and math skills. As many of those convicted will eventually be paroled, such skills are necessary to play positive roles in communities.

***AB 743 (Washington), Chapter 498,*** establishes a pilot project to require a parolee or probationer to participate in literacy General Education Development programs designed to assist the person in obtaining a twelfth-grade education equivalency.

## Elder Abuse

As written, current law only targets a small fraction of those who financially abuse the elderly. For example, Penal Code Section 368(c) is limited to "caretakers" - any person who has the care, custody, control of, or stands in a position of trust with an elder or dependent adult.

Statute does not extend to persons who target the elderly with home repair, roofing, utility and telemarketing scams; fraudulent auto crashes; mortgage and annuity fraud; "bunco" schemes; and fraudulent marriages. In addition, current law does not extend to family members who financially abuse elderly relatives but are not "caretakers". Persons who commit these offenses must be prosecuted under general theft statutes, which carry lower penalties and do not identify perpetrators as abusers.

***AB 880 (Hertzberg), Chapter 934,*** expands criminal sanctions for offenses pertaining to financial abuse of the elderly and dependent adults to apply to all persons, not just caretakers. Specifically, this law provides that any person not a caretaker who violates any provision of law proscribing theft or embezzlement with respect to the property of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punished, as specified, based on the value of the money, labor, or property taken:

- If the loss exceeds $400, the offense is a felony, punishable by two, three or four years in state prison, or up to one year in the county jail.

- If the loss is less than $400, the offense is a misdemeanor, punishable by up to one year in the county jail and a fine up to $1,000.

## Kidnapping

Penal Code provisions relating to kidnapping young children need to be clarified. The Legislature must declare that an offender kidnapping a child under the age of 14 is subject to an enhanced penalty of 5, 8, or 11 years in state prison rather than 3, 5, or 8 years. In addition, clarification is necessary due to court confusion on how to interpret Penal Code Section 208, which prescribes the enhanced penalty.

In addition, cross-referencing corrections are necessary to fully implement AB 59 (Brown), Chapter 817, Statutes of 1997.

***AB 1290 (Havice), Chapter 925*:**

- Declares that Penal Code Section 208(b), kidnapping a child under 14 years of age, provides an enhanced penalty for a Penal Code Section 207 violation and is not a distinct substantive crime, mooting People v. Allen (S068260) and People v. Martinez (S064345).

- States it is not the Legislature's intent to change the current Penal Code Section 207 asportation standard.

- Corrects all remaining cross-references to reflect AB 59's enactment.

- Makes the following changes to Penal Code Section 667.71: (1) removes the district attorney "veto authority" on what sentence is imposed; (2) adds aggravated sexual assault on a child as a predicate offense for this habitual sexual offender statute; (3) adds continuous sexual abuse of a minor as a predicate offense to the habitual sexual offender statute; and (4) corrects AB 59's incorrect reference to kidnapping to commit a lewd act in violation of Penal Code Section 207 in Penal Code Section 667.71.

- Provides that any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor 16 years of age is guilty of an alternate felony/misdemeanor.

- States that in determining whether the offender is at least 10 years older than the child, the difference in age is measured from the birth date of the offender to the birth date of the child.

## Evading a Peace Office

Under current law, a person who willfully flees or attempts to elude a pursuing peace officer and proximately causes serious injury or death can be charged with either a misdemeanor or a felony. Violations result in one year of imprisonment in the county jail or two, three, or four years in state prison and/or specified fines.

Current penalties do not sufficiently address the willful nature of the crime or the public danger. In the past three years, the California Highway Patrol reports pursuits have resulted in 5,437 collisions, 3,361 injures, and 93 fatalities.

> ***AB 1382 (Olberg), Chapter 256,*** increases the punishment for driving a motor vehicle while willfully evading a peace officer and proximately causing serious bodily injury or death from an alternate felony/misdemeanor, punishable by two, three, or four years in prison, or up to one year in county jail, to an alternate felony/misdemeanor punishable by three, four or five years in state prison or up to one year in the county jail.

## Body Armor

In November 1994, a criminal was able to fend off 120 armed police officers for 32 minutes. The gunman, protected by full body armor, killed a San Francisco police officer.

In 1997, a North Hollywood bank robbery led to a one-hour confrontation between two criminals shielded by full body armor and 350 police officers, resulting in two deaths and injuries to more than 10 other persons.

> ***AB 1707 (Wildman), Chapter 297,*** the "James Guelff Body Armor Act of 1998", prohibits a person convicted of a violent felony from purchasing, owning or possessing body armor. This new law allows the police chief or sheriff to grant an exception or limited relief where a petitioner's employment, livelihood, or safety depended on the ability to possess and use body armor and contained legislative intent relating to the exercise of broad discretion to fashion appropriate relief where warranted.
>
> This new law provides that law enforcement officials enforcing this law against a person granted relief is immune from any liability for false arrest unless specified circumstances were present.

## Violence Against a Witness or Victim

Penal Code Section 140 does not make the actual use of force to intimidate persons who previously cooperated with law enforcement officials a criminal act. Penal Code Section 140 should parallel Penal Code Section 136.1(c)(1), which criminalizes the use of force to intimidate a person from testifying in a criminal proceeding or otherwise cooperating with law enforcement agencies.

> ***AB 1797 (Davis), Chapter 245,*** specifies that the prohibition against intimidation of witnesses extends to the actual use of force against witnesses.

## Financial Crimes

Existing law regarding forgery and credit card fraud should be clarified and streamlined.

***AB 2008 (Woods), Chapter 468,*** restructures and rephrases code provisions relating to financial crimes, and clarifies and codifies existing case law establishing traveler's checks as instruments that can be forged. This law also provides every person who acquires or retains possession of access card account information with respect to an access card validly issued to another person, without the cardholder's or issuer's consent, with the intent to use the card fraudulently is guilty of grand theft (an alternate felony/misdemeanor, punishable by imprisonment for either 16 months, 2 or 3 years in state prison, or up to one year in county jail).

## Crimes against Public Officials

Jurors, peace officers, prosecutors, judges and other public officials face ever-increasing personal attacks in retaliation for carrying out their official duties. In addition, criminals are now targeting families as well.

***AB 2154 (Pacheco), Chapter 748,*** adds peace officers, non-elected public defenders, prosecutors and their families to the law which contains severe penalties for assault or attempted murder on elected public officials. This law provides the attempted murder of a peace officer, public defender and prosecutor is punishable by 15-years-to-life and provides that an assault on a peace officer, public defender or prosecutor is an alternate felony/misdemeanor. Specifically, this new law:

- Expands the list of public officials under applicable alternate felony/misdemeanor penalties relating to the assault of the public official in retaliation for, or to prevent the performance of, the victim's official duties.

- Expands the list of public officials relating to the attempted murder in retaliation for, or to prevent, the performance of official duties, punishable by a term of 15 years to life and such person is not eligible for parole for a minimum of 15 years.

- Adds to the list of "public officials": (1) a former judge of any local, state or federal court of record; (2) any prosecutor or assistant prosecutor of any local, state or federal prosecutor's office; (3) a former prosecutor or assistant prosecutor of any local, state, or federal prosecutor's office; (4) an assistant public defender of any local, state, or federal public defender's office; (5) a former public defender or assistant public defender of any local, state, or federal public defender's office; (6) any peace officer; and (7) any juror in any local, state or federal court of record, or the immediate family of any of these officials.

- Defines "immediate family" and "peace officer".

**Computer Crime**

When living in an age increasingly dominated by computers, it is important for law enforcement to be adequately trained. Law enforcement training in high technology crimes and a feasibility study for a state-operated, computer forensics center are needed. If a patrol officer is inadequately trained, a high-tech crime may go unrecognized or unsolved. If a computer examination is not conducted properly, valuable evidence may be lost and valuable property damaged. New technologies are greatly affecting the manner in which traditional crimes are being carried out. Stalkers are now using computers, faxes, and other means to invade the privacy and the rights of their victims.

***AB 2351 (Hertzberg), Chapter 826,*** expands current stalking and telephone harassment laws to include contacts made through electronic communication devices such as computers. This new law requires police officers to receive training in high technology crimes and requires the Office of Criminal Justice Planning (OCJP) to conduct a feasibility study with respect to a state-operated center on computer forensics. Specifically, this new law:

- Adopts the definition of "electronic communication device" (ECD) found in current federal law.

- Clarifies that the ECD definition applies to the credible threat and other provisions included in this law.

- Provides that an offense committed by means of an ECD medium, including the Internet, may be deemed to have been committed where the electronic communication was originally sent or was first viewed by the recipient.

- Clarifies that telephone calls or electronic contacts made in good faith are not punishable.

- Amends the police officer training provision so that high technology crime training is mandated only for police officers or sheriffs at a supervisory level, and offered to all officers and sheriffs as part of continuing professional training.

- Appropriates $230,000 from the General Fund to the OCJP for the purpose of performing the feasibility study.

## Theft: Vehicles: Receipt of Stolen Property

Existing law provides for criminal penalties for the possession of, or receiving, stolen property but is not specific as to vehicle theft.

Existing law also provides for increased penalties for a second or subsequent automobile theft or grand theft auto conviction. However, existing law does not include the theft of all motor vehicles, trailers, motorized special construction equipment, motorized vessels, or unlawfully receiving any of these vehicles.

> ***AB 2390 (House), Chapter 710,*** creates a new stolen property section of law specific to vehicles and provides any person buying or receiving any motor vehicle, trailer, motorized special construction equipment, or motorized vessel stolen or obtained by theft, extortion, knowing the property be stolen or illegally obtained is punishable by imprisonment in the state prison for 16 months, 2 or 3 years, or by up to one year in the county jail.
>
> This law expands the list of felony grand theft offenses. A second or subsequent conviction requires increased penalties to include the grand theft of any type of motor vehicle, trailer, motorized special construction equipment, or motorized vessels, or the unlawful receiving or possession of any of the above.

## Murder: Jurisdiction: Special Circumstances

Under current law, if a serial killer commits murder in more than one county, he or she must be tried separately in each jurisdiction. In addition to the waste of public resources, victims' families must testify repeatedly about the same crime in different trials.

> ***SB 469 (Rainey), Chapter 549,*** allows for the consolidation of murder charges into a single trial for a serial killer charged with murder in more than one county as long as the murders are connected in their commission.
>
> This law provides that in a multiple murder special circumstance case, the jurisdiction for any of the murders charged is the county that has jurisdiction for one or more of the murders as long as the charged murders are "connected together in their commission."

## Human Immunodeficiency Virus

Intentionally exposing an individual to HIV is as much a criminal act as assault with a deadly weapon. Both crimes involve one person willfully and intentionally causing injury to another by using an instrument in a manner known to cause serious harm.

> ***SB 705 (Rainey), Chapter 1001,*** creates a new criminal offense for HIV exposure. Specifically, this new law:

- Makes it a felony for a person to expose another to HIV by engaging in unprotected sexual activity, punishable by three, five or eight years in state prison, when the infected person knows at the time of the unprotected sex that he or she is infected with HIV, has not disclosed HIV-positive status, and acts with the specific intent to infect the other person with HIV.

- Provides evidence that the person had knowledge of his or her HIV-positive status without additional evidence is not sufficient to prove specific intent.

- Creates a defense that sexual activity took place between consenting adults after full disclosure by the infected person of his or her HIV-positive status.

- Provides for the confidentiality of the victim's identity during prosecution, but gives the victim's actual name to defense counsel as part of discovery.

- Requires notwithstanding privacy provisions, records of the diagnosis, prognosis, testing, or treatment of any person relating to HIV be disclosed in a criminal investigation for a violation of the felony created by this law if authorized by a court order.

- Requires a court, in deciding whether to issue an order, to weigh the public interest and the need for disclosure against any potential harm to the defendant, and upon issuance of an order, to impose safeguards.

- Provides that any disclosure in violation of a court order is subject to existing misdemeanor and civil penalties.

- States that nothing in this law is intended to compel the testing to determine the HIV status of any victim of an alleged crime or restrict or eliminate anonymous AIDS testing programs.

- Defines "sexual activity" and "unprotected sexual activity".

**Personal Information**

AB 56 (Murray), Chapter 768, Statutes of 1997, made "identity theft" a new crime to stop the practice of stealing another person's identity (i.e., a social security number) and using that identify to falsely obtain credit, goods, or services.

Using another person's personal identifying information to gain access medical records should also be prohibited.

***SB 1374 (Leslie), Chapter 488,*** increases the penalty for personal identity theft from a misdemeanor to an alternate felony/misdemeanor and expands personal

identity theft to include the use of the illegally obtained information “for any unlawful purpose,” specifically including medical information.

**Criminal Law Provisions**

Minor, non-controversial changes need to be made to various criminal laws.

***SB 1880 (Senate Committee on Public Safety), Chapter 606,*** makes minor non-controversial changes to the Penal Code and other penal provisions. Specifically, this law:

- Codifies legislative intent that the lifetime ban on a driver’s license for a person convicted of assault with a deadly weapon, when the weapon is a vehicle, applies to felony assault but not misdemeanor assault.

- Temporarily allows sheriffs in counties with a population of 100,000 or less to use correctional officers on an interim basis as court bailiffs until January 1, 2003.

* * *

## Felony Sentencing, Prior Prison Terms and Enhancements

**Crimes** Table of Contents

For the purpose of enhanced sentences when firefighters are assaulted in the performance of their duties, existing law defines "firefighter" to include only a person "actually engaged in firefighting, fire supervision, fire suppression, fire prevention, or fire investigation." As a result of this definition, an assault on a firefighter performing paramedic duties, for example, is treated as a lesser offense.

In addition, numerous cross-references need to be made to fully implement the "10-20-life" statute [AB 4 (Bordonaro), Chapter 503, Statutes of 1997].

***AB 105 (Wayne), Chapter 936,*** makes cross-referencing changes to fully implement the "10-20-life" law; cross-references various enhancements; subdivides various "run-on" subdivisions in three sexual assault statutes into discreet paragraphs within those subdivisions; clarifies that the enhancement for prior drug convictions includes out-of-state priors; and clarifies that an assault on a firefighter is subject to enhanced punishment if the firefighter is performing his or her duty. Specifically, this law:

- Reflects the enactment of the "10-20-life" law by making changes to various code sections to fully implement the "10-20-life" statute.

- Includes, for the purpose of assaults on a firefighter, an assault committed on a firefighter while in the line of duty, without specific references to fighting fires.

- Clarifies the application of an enhancement [AB 904 (Miller), Chapter 553, Statutes of 1997] and amends a generic reference in an enhancement section to reflect the enactment of 1997 legislation.

- Breaks into discreet paragraphs certain subdivisions in statute for the crimes of sodomy, oral copulation and foreign-object rape.

- States the Legislature's intent that last year's provisions creating a sentence enhancement for injuries or deaths caused by the operation of illicit drug manufacturing laboratories do not preclude prosecution for murder or manslaughter.

- Clarifies that an existing enhancement for prior drug convictions includes convictions for prior offenses outside California which are the same as prior convictions within California for the purposes of this enhancement.

- Makes conforming and cross-referencing changes to reflect various provisions of this law and adds language to avoid chaptering out AB 357 (Havice), Chapter 754; AB 880 (Hertzberg), Chapter 934; AB 1290 (Havice), Chapter 925; AB 1646 (Battin), Chapter 96; AB 1999 (Kuehl), Chapter 933; SB 344 (Monteith), Chapter 45; SB 1715 (Calderon), Chapter 935; and SB 2139 (Lockyer), Chapter 931.

**Food Stamps: Fraud: Penalties**

Recent legislation mandates using electronic benefits transfer for food stamp benefits distribution. Fraudulent appropriation of these benefit transfers should be penalized.

***AB 131 (Ortiz), Chapter 903,*** requires that probation be denied for any person who commits fraud relating to food stamp distribution by means of electronic transfer of benefits where the loss exceeds $100,000.

This new law also provides that if a person is convicted of fraud relating to food stamps by means of electronic transfer of benefits, in addition and consecutive to the penalties for the violation, and the defendant has not been punished by an additional term under other provisions of law, the following penalties apply:

- An additional term of one year in the state prison if the electronic transfer of benefits fraud exceeds $50,000.

- An additional term of two years in the state prison if the electronic transfer of benefits fraud exceeds $150,000.

- An additional term of three years in the state prison if the electronic transfer of benefits fraud exceeds $1,000,000.

- An additional term of four years in the state prison if the electronic transfer of benefits fraud exceeds $2,500,000.

**Serious Felonies**

Under current law, a defendant may not plea bargain when charged with a serious felony. When a defendant has a prior serious felony conviction and commits a new serious felony offense, the defendant must receive a sentence enhancement of five years for each prior serious felony brought and tried separately. If an offense was a serious felony as of June 30, 1993, the offense constitutes a "prior strike" under the Three-Strikes law.

Because of various court decisions and statutory changes, the serious felony list has not been updated. Moreover, a number of anomalies have developed as the result of piece-meal changes to the serious felony list.

In many cases, offenses defined as "serious felonies" do not fit an exact code section crime definition. Therefore, the California Supreme Court has repeatedly held that the determination of whether conduct constitutes a serious felony is based on the nature of the conduct and not the descriptive code section. As such, when determining whether to treat a prior offense as a serious felony, the court must look at the entire record.

***AB 357 (Havice), Chapter 754,*** makes the following changes and clarifications to the serious felony list:

- Incorporates in-concert forms spousal and foreign-object rape.

- Incorporates continuous sexual assault upon a minor.

- Adds all forms of first-degree burglary therefore codifying People v. Cruz, (1996) 13 Cal.4th 764.

- Adds aggravated assault on a firefighter.

- Adds all assaults with caustic chemicals.

- Specifically lists Penal Code Section 220 conduct.

- Expressly provides that persons subject to the 10-20-life law.

The changes made to Penal Code Section 1192.7 by this law are incorporated into AB 105 (Wayne), Chapter 936.

## Kidnapping

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Penal Code provisions relating to kidnapping young children need to be clarified. The Legislature must declare that an offender kidnapping a child under the age of 14 is subject to an enhanced penalty of 5, 8, or 11 years in state prison rather than 3, 5, or 8 years. Clarification is necessary due to court confusion on how to interpret Penal Code Section 208, which prescribes the enhanced penalty.

In addition, cross-referencing corrections are necessary to fully implement AB 59 (Brown), Chapter 817, Statutes of 1997.

***AB 1290 (Havice), Chapter 925*:**

- Declares that Penal Code Section 208(b), kidnapping a child under 14 years of age, provides an enhanced penalty for a Penal Code Section 207 violation and is not a distinct substantive crime, mooting People v. Allen (S068260) and People v. Martinez (S064345).

- States it is not the Legislature's inent to change the current Penal Code Section 207 asportation standard.

- Corrects all remaining cross-references to reflect AB 59's enactment.

- Makes the following changes to Penal Code Section 667.71: (1) removes the district attorney "veto authority" over what sentence is imposed; (2) adds aggravated sexual assault on a child as a predicate offense for this habitual sexual offender statute; (3) adds continuous sexual abuse of a minor as a predicate offense to the habitual sexual offender statute; and (4) corrects AB 59's incorrect reference to kidnapping to commit a lewd act in violation of Penal Code Section 207 in Penal Code Section 667.71.

- Provides that any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor 16 years of age is guilty of an alternate felony/misdemeanor.

- States that in determining whether the offender is at least 10 years older than the child, the difference in age is measured from the birth date of the offender to the birth date of the child.

## DNA and Forensic Identification Data Base and Data Bank of 1998

A more effective aid for identifying, apprehending and prosecuting criminal suspects; linking unsolved crimes; solving past crimes; and exonerating the innocent is needed.

Law enforcement can use a data bank more consistently in solving crimes and quickly identify a repeat offender who commits a crime from biological evidence (hair, a fleck of skin, or blood) - the type of evidence commonly found at a crime scene.

***AB 1332 (Murray), Chapter 696*** establishes the DNA and Forensic Identification Data Base and Data Bank Act of 1998 and adds legislative intent that the Department of Justice (DOJ) identify $500,000 from existing resources to fund the costs of implementing this law during the first six months of its operation. Specifically, this new law:

- Requires all laboratories, including the Department of Justice's DNA laboratories, contributing DNA profiles for inclusion in California's DNA Data Bank be accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB).

- Requires each laboratory to submit to the DOJ for review the annual report required by the ASCLD/LAB that documents the laboratory's adherence to ASCLD/LAB standards.

- Requires the DOJ to catalog all statistical or research information requests obtained from the DNA data bank.

- Provides that, commencing January 1, 2000, the DOJ is required to submit an annual letter to the Legislature including specified information with respect to each request for information obtained from the DNA data bank.

- Expands the list of crimes for which samples must be taken for the Data Bank, including mayhem and torture.

- Provides that any person convicted of specified offenses and committed to state prison, county jail, any institution under the jurisdiction of the California Youth Authority (CYA) where he or she was confined or is granted probation, or is released from a state hospital, as specified, must provide two specimens of blood, a saliva sample, right thumbprints and a full palm print impression to that institution or, if granted probation, to a person as specified.

- Requires expunging a person's information and materials in the Data Bank when the underlying conviction or disposition has been reversed and the case dismissed, the defendant has been found factually innocent, the defendant has been found not guilty, or the defendant has been acquitted.

- Authorizes DOJ to dispose of unused specimens and samples.

- Provides California Department of Corrections' and CYA's duties and requirements under this law will commence on July 1, 1999.

- Revises legislative declarations and purpose and adds technical amendments.

## Punishments: Enhancements

When a felon is released on his or her own recognizance and then commits another felony, he or she should be incarcerated for an extended period of time.

***AB 1693 (Sweeney), Chapter 119,*** provides the existing two-year prison term enhancement for new felony offenses committed while a defendant is released from custody on a pending felony case applies where the defendant has already been sentenced to custody time on the pending felony matter, but commits the new offense during the period after sentencing while that defendant is permitted by the court to temporarily remain out of custody prior to reporting to serve that sentence.

Specifically, this new law changes the alternative definition of "primary offense" from felonies committed during the period "between the pronouncement of judgment or a grant of probation and the time the person actually surrenders into custody or is otherwise returned to custody," to felonies committed during the period "between the pronouncement of judgment and the time the person actually surrenders into custody or is otherwise returned to custody."

## Corrections

When the amount of pre-imprisonment custody credits equals or exceeds a person's sentence, the inmate is deemed to have served his or her sentence including any period of parole and is not delivered to CDC. Therefore, a person can be released from court and not subject to parole supervision.

***SB 295 (Rainey), Chapter 338,*** allows unclaimed inmate money of $5 or less in an inmate's trust account after he or she has been paroled to be placed in the CDC's Inmate Welfare Fund.

This law also provides that if the amount of pre-sentence custody credits exceeds the term of imprisonment imposed, the court must deem the sentence served and order the defendant to serve a period of parole, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, and deletes provisions requiring a biennial report to the Governor.

This law restores provisions which sunset on January 1, 1999 and allow a defendant serving time in an alternative program in lieu of imprisonment in the county jail; where statute requires a minimum mandatory custody period, time spent in these facilities qualifies to meet the minimum mandatory time requirements.

## Insurance Fraud: Sentencing

Criminals are staging motor vehicle accidents. As fraud accounts for a large part of insurance premium dollars, reducing the number of staged automobile accidents will lower the cost of auto insurance.

The Department of Insurance estimates that in southern California alone there are as many as 10 staged collisions per day and costs to policyholders have increased by about $300 million annually.

> ***SB 334 (Lewis), Chapter 189,*** provides that any person who knowingly participates in a vehicular collision or any other accident for the purposes of presenting any false or fraudulent claim and has two prior offenses for the same offense receives a five-year enhancement in addition and consecutive to the sentence for the underlying offense.
>
> Additionally, this law adds a two-year enhancement to the sentence of a person who causes serious bodily injury resulting from a vehicular collision or accident caused for the purpose of presenting a false or fraudulent insurance claim.
>
> The provisions of this law are incorporated into AB 105 (Wayne), Chapter 936.

## Crimes: Manslaughter

People are staging automobile accidents to collect insurance proceeds. Some accidents have caused serious injury and death.

An offender staging a collision resulting in death can be charged with second-degree murder; however, in order to prove second-degree murder, it must shown that that a person committed an act of which the natural consequences are dangerous to life and the person knew the conduct endangered life and acted with a conscious disregard. The penalties for vehicular manslaughter involving a staged vehicle accident need to be increased.

> ***SB 1407 (Lockyer), Chapter 278,*** makes the death of any person as a result of a vehicular collision, knowingly committed for the purposes of financial gain, a vehicular manslaughter punishable by 4, 6, or 10 years in the state prison. This law is not to be construed as to prevent prosecution for second-degree murder in appropriate cases.

## Sentencing

The Penal Code should be simplified by placing all existing sentencing enhancements into one Penal Code section as a reference guide.

***SB 1794 (Schiff), Chapter 395,*** lists and categorizes all sentence enhancements by schedules, for reference purposes only, based on the length of the term of imprisonment imposed by each sentence enhancement.

**Sentencing**

The five-year limitation on non-violent subordinate terms needs to be eliminated.

***SB 1900 (Schiff), Chapter 926,*** eliminates the five-year lid on subordinate terms when imposing consecutive sentences. This law contains language to avoid chaptering out SB 295 (Rainey-Lockyer), Chapter 338; and AB 1290 (Havice), Chapter 925.

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## Misdemeanors and Infractions

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A person placed on Electronic Home Monitoring System who breaks his or her bands to escape cannot be charged with felony escape and no punishment can be imposed except a probation violation.

***AB 531 (Knox), Chapter 258*****,** provides that any person participating in a home detention or home monitoring program and fails to return to his or her place of confinement can be charged with escape and is subject to the following penalties:

- Any person convicted of a misdemeanor confined in a home detention program who escapes is punished by one year and one day in the state prison or by up to one year in the county jail.

- Any person convicted of a felony confined in a home detention program who escapes is punished by imprisonment in the state prison for a term of 16 months, 2 or 3 years in the state prison or in the county jail for up to one year, served consecutive to his or her present term of confinement.

**Residential Real Property: Trespass: Rent Skimming**

Existing law does not explicitly outlaw phony adverse possession schemes and some rental companies are fraudulently renting unoccupied houses.

***AB 583 (Davis), Chapter 193,*** prohibits phony adverse possession schemes; adds a new Penal Code trespass provision; and adds a clarification to the Civil

Code rent skimming definition to prohibit rent skimming by phony adverse possession schemes in which rental companies rent unoccupied houses or apartments belonging to others, without permission, under claims of right by adverse possession. Additionally, this law:

- Defines further "rent skimming" for purposes of this law to include receiving rental income from the rental of residential real property without the consent of the property owner or his or her agent, as specified.

- Excludes any tenant, subtenant, subleasee, or assignee, as well as any other hirer having a lawful occupancy interest in the residential dwelling.

- Provides that claiming ownership, claiming or taking possession of, or causing another to enter or remain in a residential dwelling for the purpose of renting or leasing the dwelling to another without the consent of the owner or the owner's lawful agent is a misdemeanor, punishable by up to six months in the county jail and/or a fine up to $1,000.

- Provides that each violation is a separate offense.

**Testimony: Closed-Circuit Television**

Placer County is approximately 153 miles in length, covering a region from Lake Tahoe to Roseville. There are multiple law enforcement agencies issuing citations and multiple court locations. Peace officers spend a great deal of time traveling to and from court appearances and are sometimes required to wait hours for five-minute court appearances. In addition, transporting defendants from location to location presents public safety risks.

***AB 635 (Oller), Chapter 356,*** provides for a pilot project for a peace officer's or defendant's closed-circuit television testimony under specified circumstances for infractions and misdemeanors, and allows an in-custody defendant to be arraigned via closed-circuit television for an infraction. Specifically, this new law:

- Limits the use of closed-circuit testimony otherwise allowed by this law to a Placer County pilot program.

- Requires that in infraction and misdemeanor trials, a defendant must consent to allow a peace officer to testify via closed-circuit television and the prosecution must consent to a defendant's request to so testify.

- Requires the presiding judge of Placer County to submit a report to Judicial Council and the Legislature on or before January 1, 2001.

- Sunsets on January 1, 2002.

## Employment of Minors: Entertainment Industry

Some production companies actively employ premature. Before an infant can be employed, the infant should be certified by a licensed pediatrician as 15 days old; is physically capable of handling the stress of film making; and that the infants' lungs, eyes, heart and immune system are sufficiently developed.

> ***AB 744 (Washington), Chapter 239,*** prohibits the employment of infants and children, as specified, on a motion picture set unless specified conditions are satisfied. This law establishes fines of $2,500 to $5,000 and/or a 60-day sentence in the county jail for any parent, guardian or employer of a minor who violates this law.

## Elder Abuse

As written, statute only targets a small fraction of those who financially abuse the elderly. For example, Penal Code Section 368(c) is limited to “caretakers” - any person who has the care, custody, control of, or stands in a position of trust with an elder or dependent adult.

Statute does not extend to persons who target the elderly with home repair, roofing, utility and telemarketing scams; fraudulent auto crashes; mortgage and annuity fraud; “bunco” schemes; and fraudulent marriages. In addition, current law does not extend to family members who financially abuse elderly relatives but are not “caretakers”. Persons commit these offenses must be prosecuted under general theft statutes, which carry lower penalties and do not identify perpetrators as abusers.

> ***AB 880 (Hertzberg), Chapter 934,*** expands criminal sanctions for offenses pertaining to financial abuse of the elderly and dependent adults to apply to all persons, not just caretakers. Specifically, this law provides that any person not a caretaker who violates any provision of law proscribing theft or embezzlement with respect to the property of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punished, as specified, based on the value of the money, labor, or property taken:
>
> - If the loss exceeds $400, the offense is a felony, punishable by two, three or four years in state prison, or up to one year in the county jail.
>
> - If the loss is less than $400, the offense is a misdemeanor, punishable by up to one year in the county jail and a fine up to $1,000.

## Crime: Fraudulent Solicitation

Fraudulent telephone solicitations have increased. Recently, individuals posing as sheriff’s deputies solicited money they claimed would be distributed to the family of slain

deputy Shayne York, an off-duty officer fatally shot on August 14, 1997 during a Buena Park hair salon robbery.

***AB 903 (Miller), Chapter 166,*** increases the maximum imprisonment and fine for fraudulent charitable solicitation from up to six months in county jail and a $1,000 fine to up to one year in county jail, and a $5,000 fine.

## Alcoholic Beverages: Minors

Three minors died in a drunk driving accident; the driver (a minor) had consumed alcohol purchased by an adult. The adult served 30 days in a county jail and the driver is serving an eight-year sentence in state prison.

***AB 1204 (Keeley), Chapter 441,*** increases the misdemeanor penalty for a defendant who purchases an alcoholic beverage for another person under the age of 21 years if the person under age 21 then consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, punishable by imprisonment in a county jail for a minimum term of six months, and a maximum term of one year and/or by a fine up to $1,000.

## Cremated Remains

Improper and fraudulent disposal and/or storage of cremated remains must be stopped.

***AB 1314 (Leach), Chapter 168,*** increases reporting requirements for disposers of cremated remains and imposes a misdemeanor penalty for improper storage of cremated remains. Specifically, this new law:

- Limits the criminal penalty for improper storage of cremated remains to a misdemeanor, punishable by up to one year in a county jail.

- Provides for a $5,000 fine for the improper disposal of remains as defined.

## Punishment: Vandalism

The damage that graffiti causes should not be under-estimated.

***AB 1386 (Goldsmith), Chapter 853,*** provides that if the amount of damage is less than $400 and the defendant has previously been convicted of vandalism, vandalism to a place of worship, vandalism by caustic chemicals, graffiti upon government facilities or vehicles (an infraction), graffiti of less than $250 of real or personal property (an infraction), or vandalism within 100 feet of a highway, the vandalism is punishable by up to one year in county jail and a $5,000 fine (rather than up to six months and a $1,000 fine under former law).

This law also provides that if a defendant convicted of vandalism, vandalism to a place of worship, vandalism by caustic chemicals, or vandalism within 100 feet of a highway or its appurtenances the defendant may be ordered, as a condition of probation, to perform up to 300 hours of community service over not more than 240 days during non-work and non-school times. The law provides that even greater amounts of community service can be ordered if otherwise authorized by another provision of law.

**Fish and Game: Penalties**

The illegal introduction of species into California waters poses a substantial risk to commercial and sport fisheries as endangered species may be destroyed.

***AB 1625 (Richter), Chapter 431*****,** makes conduct prohibited currently by state law equivalent to civil and criminal penalties. By providing significant reward provisions, this law includes new incentives to encourage citizens to turn in violators. This law also contains significant new provisions for reimbursing taxpayers for response and remediation expenses incurred by the state due to the prohibited conduct.

This law increases custody to a minimum of six months and a maximum of one year and the maximum fine from $1,000 to $50,000 for placing or planting an "aquatic nuisance species" in any state waters without first obtaining permission from the Department of Fish and Game. This law makes violation also punishable by revocation of all fishing licenses and permits held by the defendant and provides that a defendant may be held monetarily liable for damages.

**Advertising: Telephonic Sellers: Electronic Mail**

"Spamming" and domain name fraud needs to be prevented. Domain names can be considered the addresses of the paths used to transmit e-mail via the Internet.

Internet users face a daily onslaught of unsolicited e-mail from Internet businesses advertising goods and services. "Spamming", the practice of sending mass e-mails, often imposes a significant time burden on Internet users and often can slow down or disrupt on-line service.

***AB 1629 (Miller), Chapter 863,*** prohibits the unauthorized use of electronic mail networks to send unsolicited e-mail advertisements ("spam") and exempts specified non-profit organizations from the state's telemarketing regulatory scheme. Specifically, this law:

- Exempts specified non-profit business organizations (chambers of commerce, business leagues, real estate boards, and boards of trade) that have an established history in the state from the registration and bonding requirements for telemarketing sellers.

- Increases the maximum daily civil damages for "spamming" violations from $15,000 to $25,000.

- Establishes a specific penalty for domain name forgery with a fine of up to $5,000 and/or imprisonment of up to one year.

- Clarifies that the "spamming" provisions apply only to networks located in California.

**Performing Animals**

Circuses are licensed and governed by the Animal Welfare Act, which is administered by the United States Department of Agriculture (USDA). With 7,800 licensed shows nationwide, performing at 10,400 sites and only 73 inspectors, enforcement is difficult at best.

In California, nonresident permits can only be issued to those licensed by USDA and those who professionally exhibit animals in another state. Nonresident permittees are not allowed to exceed their stay in California unless they provide facilities which meet the caging standards established by regulations for each animal listed on the permit. Notification requirement enhances the ability of local animal control officers to enforce humane protection laws.

***AB 1635 (Migden), Chapter 579,*** requires a traveling circus or carnival that performs in California to notify each entity that provides animal control services for a city, county, or city and county in which the traveling circus or carnival intends to perform of its intent to perform within that jurisdiction, as specified, and to provide that entity with a schedule of its performances in California. This law makes it a misdemeanor to violate either of these provisions, punishable by a fine of not less than $500 and not more than $2,000 for a first violation; for a second or subsequent violation, by a fine of not less than $1,500 and not more than $5,000.

**Advertising: Electronic Mail**

Internet users face a daily onslaught of unsolicited e-mail from Internet businesses advertising goods and services. Individual consumers should have the right to opt out of being on "spam" distribution lists and individuals not complying with consumers' wishes should be fined.

***AB 1676 (Bowen), Chapter 865,*** allows consumers the option of opting out of "spam" distribution lists and makes "spamming" a misdemeanor punishable by a fine and/or imprisonment.

This new law prohibits unsolicited commercial e-mail and clarifies that the law applies only to unsolicited commercial e-mail originating in and sent to California residents. A violation is a misdemeanor, punishable by $1,000 and/or imprisonment (the same as a violation of general advertising law). This law becomes inoperative if a federal law on this subject is enacted.

This new law is modeled on the state's existing junk fax law, which allows individuals to opt-out of receiving unsolicited advertising via fax and imposes a $500 fine for each violation [see AB 2438, (Katz), Chapter 564, Statutes of 1992].

## Crimes: Supervision of Prostitute

Table of Contents

It is unlawful to loiter with the intent to commit an act of prostitution. Pimps recruit and supervise prostitutes. Laws against pimping and pandering are inadequate to control pimp activity as the prosecution generally requires the cooperation of prostitutes which occurs infrequently.

***AB 1695 (Knox), Chapter 460,*** makes it a misdemeanor to supervise, recruit, direct, or in any way aid and abet an act of prostitution, or to collect the proceeds earned from an act of prostitution.

## Domestic Violence

A high percentage of domestic violence cases are perpetrated against girlfriends, ex-girlfriends, ex-spouses, and ex-cohabitants. Ninety-five percent of abuse victims are women.

***AB 1767 (Havice), Chapter 699,*** broadens the potential list of victims included within the misdemeanor offense of battery created for a person involved in a "dating relationship" to include a person with whom the defendant currently has or previously had an engagement relationship. This law expands authorization for warrantless arrests. This law also contains language to avoid chaptering out AB 247 (Scott), Chapter 224; and SB 1470 (Thompson), Chapter 182.

## Personal Information: Minors

Current law provides no statutory requirements preventing an organization from disseminating children's names and addresses to registered sex offenders. Most organizations do employ some type of screening process prior to dissemination. Industry standards should be codified.

In addition, a parent should have the ability to remove a child's name and address from an organization's list.

***AB 1792 (Havice), Chapter 763,*** provides there is misdemeanor liability for a person who knowingly provides access to personal information about children to

registered sex offenders when the person providing the information knows the other person is a registered sex offender. Specifically, this law:

- Makes it a misdemeanor for any list broker who continues to disclose personal information about a child within 20 days after that child's parent has requested in writing that disclosure be stopped.

- Requires persons who market or sell products or services directed at children to maintain a list of persons who have made written requests to discontinue sending items to an individual or child, requires such actions to cease upon written request, and makes it a misdemeanor for failure to comply with these requirements.

- Provides that it is a misdemeanor for any person to knowingly distribute or receive any personal information about a child with knowledge that the information would be used to abuse or physically harm the child.

- Does not affect the sale of lists to any governmental agency, the National Center for Missing and Exploited Children, non-profit institutions, as defined, or certain defined educational institutions.

**Unlawful Dumping: Increased Fines**

Large quantities of garbage, particularly commercial quantities of roofing material and large household items, are being deposited on neighborhood sidewalks and rural roadsides. These items pose a significant health and safety threat and cause preventable deterioration. Fines and punishment for these activities must deter such disposal.

***AB 1799 (Migden), Chapter 50,*** increases fines and penalties for unlawful dumping of solid waste matter. Specifically, this new law increases the penalties for dumping or causing to be dumped any waste matter in or on any public or private highway or road, specified private property, or in or upon any public park or public property other than property designated for that purpose, an infraction, as follows:

- Increases the mandatory minimum fine upon first conviction from $100 to $250.

- Increases the mandatory maximum fine upon third or subsequent conviction from $1,000 to $2,500.

- Increases the number of hours a court may order a defendant to collect waste matter as a condition of probation from 8 to 12 hours.

- Adds to the definition of commercial quantities of waste matter to include "any amount equal to or in excess of one cubic yard."

- Gives the court discretion to waive or reduce a fine where the interest of justice is best served.

**Telephonic Marketing**

Telemarketing crimes result in losses of millions of dollars each year.

***AB 1872 (Baca), Chapter 446,*** prohibits certain telephonic sellers from using courier or pickup services to obtain a purchaser's payment until after the goods are delivered, and prohibits a person from collecting a fee for attempting to recover certain property prior to seven business days after recovering and delivering such property. A violation of these provisions is a misdemeanor, punishable by up to one year in county jail and a maximum $1,000 fine. This law provides the fee recovery section does not apply to an attorney licensed to practice law in California and specifically retained for the recovery of money or any other item of value.

**Vandalism**

Local law enforcement's ability to pursue individuals committing vandalism is hampered by limited financial resources and the need to address other, more serious crimes.

***AB 1897 (Alquist), Chapter 851,*** allows local law enforcement agencies to recover their costs in controlling and investigating incidents of vandalism. Specifically, this law authorizes the court to order the payment of law enforcement costs of identifying and apprehending a defendant up to $250, in addition to any other punishment or fine, by a person convicted of an act of vandalism. This law also provides that no amount paid by a defendant may be applied to law enforcement costs before all fines, penalty assessments, and restitution orders and/or fines have been paid. This law can be enacted at local option, and includes "ability to pay" and sunset provisions.

**Obstruction of Justice: Judicial Officers**

Current law contains a loophole allowing some individuals in positions of authority to avoid prosecution for sexual harassment and the obstruction of justice.

***AB 1922 (Firestone), Chapter 512,*** creates a misdemeanor offense applicable to every judicial officer, court commissioner, referee, or any person authorized by law to hear or determine any question or controversy who commits any act that he or she knows or should have known perverts or obstructs justice or the due administration of the laws, punishable by 16 months, 2 or 3 years in state prison

or by up to one year in the county jail. The new law does not prohibit prosecution for conspiracy, as defined, or any other law.

## Community and Residential Care Facilities: Security Window Bars Table of Contents

Community care facilities must not install window bars which cannot be opened by residents.

***AB 1987 (Aroner), Chapter 343,*** prohibits security window bars from being installed or maintained on community and residential care facilities on or after January 1, 1999, unless the security window bars meet current state and local requirements, as applicable, for security window bars and safety release devices.

## Firearms: Punishment

Recently, the Federal Bureau of Alcohol, Tobacco and Firearms (BATF) has developed an active program to help local law enforcement agencies identify gun traffickers. Gun information sent to the Department of Justice (DOJ) and the BATF must be standardized.

State law should be conformed to federal law by deleting the exemption from background checks for long gun curios and relics. The federal Brady Bill, which takes effect November 1998, requires all firearm purchasers to undergo criminal background checks under the National Instant Criminal Background Check System (NICS). This state exemption for long gun curios and relics must be deleted so that background checks can be conducted through the state's existing Dealer Record of Sale (DROS) process.

***AB 2011 (Hertzberg), Chapter 911,*** requires that a serial number be on a modern handgun as a condition of transfer of ownership, requires the tracing of all guns that law enforcement seizes, and subjects long-gun curios and relics to the DROS process. Specifically, this new law:

- Makes it a misdemeanor for any person to sell or otherwise transfer his or her ownership in a handgun unless the firearm bears either the name of the manufacturer, the manufacturer's make or model, and a manufacturer's serial number or the identification number or mark assigned to the firearm by the DOJ.

- Make technical changes to the tracing requirements in this law.

- Makes a General Fund (GF) appropriation of $521,000 over two fiscal years to finance the tracing required by this law.

- Provides that this law becomes effective on November 30, 1998, but delays implementation of an electronic system to receive and forward information to the BATF until January 1, 2002.

- Contains amendments to avoid chaptering out provisions of SB 63 (Peace), Chapter 908.

**Vehicles: Peace Officers: Fleeing**

The incidence of drivers fleeing peace officers has increased and high-speed pursuits present a serious public danger. In 1996, 21 persons died in vehicular collisions due to police pursuits while approximately 1,000 suffered injuries.

> ***AB 2066 (Sweeney), Chapter 472,*** requires a six-month minimum sentence for willfully fleeing or evading a peace officer while driving in a willful or wanton manner with disregard for the safety of persons or property, and allows for a publicity campaign regarding these changes if specified moneys are provided to fund the campaign.

**Interference with the Operation of an Aircraft**

Shining a light at any aircraft, whether a fixed-wing craft or helicopter, can be very disorienting to that aircraft's crew. Aircraft on final approach at low altitude and high speeds can be particularly affected.

> ***AB 2101 (Bowler), Chapter 218,*** expands current statute which prohibits shining a light or other bright device capable of impairing the operation of a helicopter to include all aircraft.

**Employment Surveillance: Notice**

Various reports indicate that workplace surveillance has increased; a reasonable limitation on surveillance should be established. An employee's right to privacy in the workplace should be protected in specific limited areas unless a court of competent jurisdiction authorizes the use of surveillance.

> ***AB 2303 (Runner), Chapter 515,*** makes it an infraction for an employer to audio or videotape an employee in a rest room, locker room, or change room, unless authorized to do so by a court order.

**Computer Crimes**

When living in an age increasingly dominated by computers, it is important for law enforcement to be adequately trained in high technology crimes. Law enforcement training in high technology crimes and a feasibility study for a state-operated, computer forensics center are needed. If a patrol officer is inadequately trained, a high-tech crime

may go unrecognized or unsolved. If a computer examination is not conducted properly, valuable evidence may be lost and valuable property damaged. New technologies are greatly affecting the manner in which traditional crimes are being carried out. Stalkers are now using computers, faxes, and other means to invade the privacy and the rights of their victims.

***AB 2351 (Hertzberg), Chapter 826****,* expands current stalking and telephone harassment laws to include contacts made through electronic communication devices such as computers. This new law requires police officers to receive training in high technology crimes and requires the Office of Criminal Justice Planning (OCJP) to conduct a feasibility study with respect to a state-operated center on computer forensics. Specifically, this new law:

- Adopts the definition of "electronic communication device" (ECD) found in current federal law.
- Clarifies that the ECD definition applies to the credible threat and other provisions included in AB 2351.
- Provides that an offense committed by means of an ECD medium, including the Internet, may be deemed to have been committed where the electronic communication was originally sent or was first viewed by the recipient.
- Clarifies that telephone calls or electronic contacts made in good faith are not punishable.
- Amends the police officer training provision so that high technology crime training is mandated only for police officers or sheriffs at a supervisory level, and offered to all officers and sheriffs as part of continuing professional training.
- Appropriates $230,000 from the General Fund to the OCJP for the purpose of performing the feasibility study.

**Trespass: Denial of Access**

A person other than the landowner can obstruct access to land easements. The only solution for property owners is to seek injunctive relief.

***AB 2355 (Olberg), Chapter 271,*** creates a new infraction, punishable by a maximum of a $500 fine, for willfully and knowingly obstructing access to or from land by any person with an ownership, lease, easement, or interest, etc., where such interest has been duly recorded with the county recorder's office. This law makes it a crime for a person having knowledge of a recorded easement to block the use of the easement by the rightful holder or their agents.

## Optical Discs

Currently, California does not regulate the use of identifiers for optical discs, such as CDs, DVDs, and CD-ROMs. As a result, fraudulent bootlegging activities have resulted in significant revenue losses.

***AB 2633 (Murray), Chapter 712,*** requires manufacturers, as defined, to mark each optical disc permanently with a specified identification mark, and specifies penalties in connection with unlawful activities related to manufacture, distribution or sale of unauthorized optical disks. Specifically, the new law:

- Requires every person who manufacturers an optical disc for commercial purposes to mark each disc permanently with an identification mark that identifies the name of the manufacturer and the state in which the optical disc was manufactured.

- Requires that the identification mark be affixed by specified permanent method in a manner in which the mark is clearly visible without the aid of magnification.

- Defines "manufacturer" as a person who replicates the physical optical disc or produces the master used in any optical disc replication process, as specified.

- States that a person comes under the purview of this law if he or she manufactures "at least 10 of the same or different optical discs in a 180-day period by storing information on the disc for the purposes of resale by that person or others." Persons who manufacture optical discs for internal use, testing, or review, or those who manufacture blank optical discs are excluded from this law's definition.

- Defines "optical disc" as a disc capable of being read by a laser or other light source on which data is stored in digital form and includes CDs, DVDs, or related mastering source materials.

- States that manufacturers violating this law's provisions are guilty of a misdemeanor, subject to a fine of $500 - $5,000 for a first offense and a fine of $5,000-$50,000 for a second or subsequent offense.

- States that any person who buys, sells, receives, transfers, or possesses for purposes of sale or rental an optical disc knowing that the identification mark required by this law has been removed, defaced, covered, altered, or destroyed, or knowing it was manufactured in California without the necessary identification mark, is guilty of a misdemeanor punishable by county jail for up to a year and/or a fine of up to $10,000.

- States that any person who knowingly removes, defaces, covers, alters, or destroys the identification mark is guilty of a misdemeanor punishable by up to one year in county jail and/or a fine of up to $10,000.

**Eggs**

Eggs returned from retail establishments and warehouses should not be reprocessed and returned to back to retail establishments.

***AB 2759 (Committee on Agriculture), Chapter 257,*** exempts "sell-by" labeling requirements on eggs sold for export and military purposes and requires pack dates labeled on containers. This law prohibits returned eggs from being reprocessed for retail shell egg sales. A violation is a misdemeanor. Specifically, the new law:

- Requires that containers of eggs packed for human consumption have the date the eggs were packed shown as a "Julian date" and defines “Julian date”.

- Prohibits eggs returned from grocery stores, warehouses, and institutions from being reprocessed for retail shell egg sales.

**Vandalism**

Vandalism is a serious and expensive problem for homeowners and businesses. Courts should have the authority to provide relief to communities and vandals should be discouraged from re-offending.

***SB 1229 (Schiff), Chapter 852,*** increases the maximum punishment from six months and a $1,000 fine to one year and a $5,000 fine for vandalism of less than $400 where the offender has previously been convicted of vandalism or related offenses (including two infractions), and permits the court to order up to 300 hours of community service in certain vandalism crimes.

**Personal Income Taxes: Bank and Corporation Taxes: Sales and Use Taxes: Withholding Taxes: Administration**

The unauthorized inspection of taxpayer information should be stopped.

***SB 1383 (Leslie), Chapter 623,*** creates the “Taxpayer Browsing Protection Act”. Specifically, this new law establishes penalties for the willful unauthorized inspection or unwarranted disclosure of information gathered from personal income or bank documents. This new law establishes a similar offense regarding the administration of the sales and use tax law and the unemployment insurance law relating to withholding taxes on wages. This law defines "inspection" as any

examination of confidential information. Any willful unauthorized inspection or unwarranted disclosure or use of this information is a misdemeanor.

The new law requires the Franchise Tax Board to notify a taxpayer of any known incidents of willful unauthorized inspection or unwarranted disclosure or use of the confidential tax records, but only if criminal changes have been filed for the willful unauthorized inspection or unwarranted disclosure.

## Security Bars: Fire Safety: Regulations

People have been trapped in residential fires when the dwellings had unopenable security or "burglar" bars cannot be opened.

***SB 1405 (Polanco), Chapter 730,*** creates statewide standards for burglar bars, requires the removal of illegal burglar bars, and increases public education. Specifically, this new law:

- Requires the State Fire Marshal (SFM) to prepare and distribute public information materials about the dangers of illegal burglar bars "to the extent that resources are available."

- Requires the SFM to adopt standards for burglar bars and safety release mechanisms on or before September 1, 1999.

- Prohibits the sale or installation of burglar bars and safety release devices on and after October 1, 1999 unless a testing laboratory recognized by the SFM has approved the bars.

- Bans unopenable burglar bars on dwellings owned, leased, or controlled by public agencies by January 1, 1999.

## Public Officers and Employees: Rationing

California codes contain outdated provisions relating to public officers and employees, oaths taken to foreign powers, and ration coupon counterfeiting.

***SB 1535 (Kopp), Chapter 776,*** updates laws pertaining to persons who seek or hold public office or employment and have taken an oath to a foreign government or organizations that advocate against the United States by allowing any person wishing to renounce that oath to do so by petitioning a superior court. This law also repeals outdated laws concerning counterfeiting government ration checks used by California during the World War eras.

## Controlled Substances: Iodine: Red Phosphorous

Iodine and red phosphorous are key chemical ingredients used in the production of methamphetamine. While individuals purchasing these chemicals are required to provide specific identification information at the time of purchase, there are no limits on the quantity of iodine or red phosphorous an individual can purchase at a given time. As result, drug dealers can easily purchase large quantities of these precursor chemicals.

***SB 1539 (Solis), Chapter 305,*** prohibits selling or buying more than eight ounces of iodine or four ounces of red phosphorous in any 30-day period. Specifically, this new law:

- Prohibits manufacturers, wholesalers, retailers, or other persons from selling more than eight ounces of iodine or four ounces of red phosphorous to an individual in any 30-day period.

- Prohibits an individual from purchasing more than eight ounces of iodine or four ounces of red phosphorous in any 30-day period.

- Exempts from these quantity and time period provisions the sale of red phosphorous or iodine to a person or business licensed or regulated by state or federal law with respect to its purchase or use of red phosphorous or iodine.

- Makes it a misdemeanor to fail to comply with the quantity and time period restrictions on the sale or purchase of iodine or red phosphorous, punishable by up to six months in county jail and/or a fine of up to $1,000.

## Work Release: Weed and Rubbish Abatement

Existing law regarding the use of work release personnel for rubbish and weed abatement should be clarified consistent with law governing work release prisoners.

***SB 1549 (Knight), Chapter 73***, adds weed and rubbish abatement on public and private property, as approved by the sheriff or other official, to the list of authorized activities for county correctional facility work release programs.

## Motor Vehicles: Lands: Alcohol and Drugs

Existing law regulates the consumption and possession of alcoholic beverages by drivers and passengers of motor vehicles during highway travel. However, current law does not regulate the consumption and possession of alcoholic beverages by drivers or passengers in motor vehicles not travelling on a highway.

***SB 1639 (O'Connell), Chapter 384,*** expands the laws prohibiting an individual from possessing an open container of alcohol while in a motor vehicle on a highway to include motor vehicles on specified public lands.

This law provides that an open container of alcohol can be kept in an off-highway motor vehicle on a highway or on lands covered under the Chappie-Z'berg Law in a "locked container" if the vehicle is not equipped with a trunk. In a motor vehicle which is not an off-highway vehicle and not equipped with a trunk, an open container can be kept in an area not normally occupied by the driver or passengers.

## Crimes

SB 1502 (Kopp), Chapter 996, Statutes of 1996, increased the maximum fee for counties collecting and processing a bad check from $25 to $35. The program should be continued.

***SB 1679 (Kopp), Chapter 522,*** removes the sunset clause on a provision setting an administrative fee for a "bad check diversion program" at $35, thereby enabling the $35 fee to remain at $35 instead of reverting to the former $25 fee. This law repeals a provision of prior law allowing a $25 fee to be reinstated on January 1, 1999.

## Cyberstalking

Using electronic communication to stalk or harass a victim should be punishable under current stalking and harassment laws. New "high tech stalking" can take the form of threatening, obscene or hateful e-mail, pages, voice mail messages, etc.

***SB 1796 (Leslie), Chapter 825,*** updates stalking and harassment laws to accommodate new technology. This new law clarifies that electronic communication devices include, but are not limited to, telephones, cellular telephones, computers, video recorders, televisions, fax machines, or pagers. Specifically, this new law:

- Expands the definition of "credible threat" in the tort of stalking to include threats communicated by means of an electronic communication device or a threat implied by a combination of verbal, written, or electronically communicated statements.

- Clarifies that the provisions of the "terrorist threat" offense apply to threats made by means of an electronic communication device.

- Expands the definition of "credible threat" in the stalking statute to include a threat performed through the use of an electronic communication device or a threat implied by a pattern of conduct or a combination of verbal, written or

electronically communicated statements and conduct, made with specified intent.

- Expands the offense related to harassing phone calls to include repeated contact by means of electronic communication device with specified intent.

- Creates a good-faith exception for obscene or threatening telephone calls or electronic contacts made with intent to annoy.

- Provides that any offense committed by use of an electronic communication device or medium, including the Internet, may be deemed to have been committed where the electronic communication or communications were originally sent or first viewed by the recipient.

- Incorporates the definition of "electronic communication" device used in a specified provision of federal law.

**Criminal Procedure: Discovery**

Investigators or attorneys must properly identify themselves and the parties they represent when interviewing victims or witnesses during investigations.

***SB 1927 (Schiff), Chapter 630,*** provides that attorneys and investigators must properly identify themselves and whom they represent when interviewing an alleged victim or a witness in a criminal investigation. The court is authorized to issue a discovery order upon a showing that a person failed to comply with these provisions. Specifically, this law provides that:

- No prosecuting attorney, attorney for the defendant, or investigator for either the prosecution or the defendant may interview, question, or speak to a victim or witness whose name has been disclosed by the opposing party without first clearly identifying himself or herself, identifying the full name of the agency by whom he or she is employed, and identifying whether he or she represents or has been retained by the prosecution or the defendant.

- When an interview takes place in person, the attorney or investigator must also show the victim or witness a business card, official badge, or other form of official identification before commencing the interview or questioning.

- The court has the authority to issue any order authorized under current discovery law for an attorney's or investigator's failure to comply with the above-listed provisions.

## Law Enforcement: Regional Transit and Public Library Services

This summer, the Altamont Commuter Express (ACE) Authority began service between Stockton and San Jose. The ACE Authority should have the same authority provided to transit districts and rail operators to enforce fare and other violations. The ACE Authority uses commuter trains, not buses, and does not fit in current statutory definition. A technical amendment should be made for the ACE Authority.

***SB 1936 (Johnston), Chapter 308,*** allows the ACE Authority to contract with designated persons to issue citations for infractions related to fare evasion and other public transportation-related matters. Specifically, this law:

- Gives the governing board of the ACE Authority the power to contract with designated persons to act as its agents in the enforcement of fare evasion and other infractions, as specified, relating to the operation of a public transportation system if these persons complete the necessary training requirements.

- Makes certain findings and declarations regarding the necessity of a special law for the ACE Authority.

This law was an urgency measure and became effective on August 17, 1998.

## Vehicles: Jamming Devices

Current law does not prohibit radar-jamming devices.

***SB 1964 (Costa), Chapter 493,*** prohibits any vehicle from being equipped with a device designed for, or capable of, jamming or disabling law enforcement radar. This law prohibits the use, purchase, possession, manufacture, sale, or distribution of devices designed to jam or disable law enforcement radar. Specifically, this law:

- Prohibits any vehicle from being equipped with any device designed for, or capable of, jamming, scrambling, neutralizing, disabling, or otherwise interfering with radar, laser, or any other electronic device used by a law enforcement agency to measure the speed of moving objects.

- Prohibits any person from using, buying, possessing, manufacturing, selling, or otherwise distributing any device designed for jamming, scrambling, neutralizing, disabling, or otherwise interfering with radar, laser, or any other electronic device used by a law enforcement agency to measure the speed of moving objects.

- Makes violation an infraction.

- Makes it a misdemeanor when a person possesses four or more of the devices described above.

- Allows a person, with a valid federal operating license for radar jammers, to transport any number of those devices if the license is carried in the vehicle transporting the devices at all times when the jammers are transported.

**Consumer Remedies: Collectibles**

Buyers of collectibles (i.e., autographed sports memorabilia) can be protected by expanding current law to include lower priced items, requiring disclosure of witnesses to autographs, and adding criminal penalties to existing consumer remedies.

***SB 2024 (Rainey), Chapter 494,*** reduces the threshold sales price for an item to be considered a collectible; requires collectible dealers to perform additional specified consumer protection tasks; increases protections relating to certificates of authenticity for collectibles; and makes it a misdemeanor to manufacture, produce, or sell a forged or imitation collectible. Specifically, this law:

- Reduces the current minimum sales price from $25 to $5 for which a collectible is included in law regulating collectibles.

- Limits the definition of the term "promoter" to include only a person who arranges, holds, organizes, or presents a trade show featuring collectibles, autograph signings, or both.

- Requires a collectible dealer to specify on a certificate of authenticity provided to a consumer at the time of sale the actual date of sale. Additionally, this law requires a dealer to retain a copy of the certificate of authenticity for at least seven years.

- Requires each certificate of authenticity to specify the date, location, and the name of the person witnessing the autograph signing of the personality in question.

- Requires each certificate of authenticity to include an identifying serial number which corresponds to an identifying number printed on the collectible item, if any. The serial number is also printed on the sales receipt, with the dealer authorized to manually write the serial number on an electronically printed receipt.

**Immunizations: Disclosure of Information**

Schools, child-care facilities, and Women, Infants, and Children (WIC) clinics should have access to immunization information.

***SB 2222 (Watson), Chapter 566,*** increases access to immunization records to specified organizations by expanding the definition of health care providers authorized to disclose immunization information, and by permitting certain organizations to receive immunization information about specific people. Specifically, this new law:

- Permits clinics or health facilities, as defined, to disclose specified information regarding a patient's identity and immunization history (information) to local health departments operating county-wide immunization information and reminder systems and to the Department of Health Services (DHS) by expanding the definition of health care provider to include clinics and health facilities for purposes of these provisions.

- Permits local health departments and DHS to disclose information to schools, child-care facilities, family child care homes, WIC service providers, and health plans, as defined, upon request for information pertaining to a specific person.

- Requires schools, child-care facilities, family child-care homes, WIC service providers, and health plans to maintain the confidentiality of the information in the same manner as other client, patient and pupil information they possess.

- Subjects health care providers, local health departments, DHS, schools, child-care facilities, family child-care homes, WIC service providers, and health plans to civil action and criminal penalties for the wrongful disclosure of the information in accordance with existing law.

- Limits the use of the information to specified purposes, including enabling schools and child-care facilities to carry out their responsibilities regarding required immunization for attendance, WIC service providers to perform immunization status assessments and refer clients for immunizations, and health plans to facilitate payments to health care providers.

- Makes legislative findings and declarations regarding the status of immunization tracking systems, the importance of immunization records, and the need for access to these records.

# DOMESTIC VIOLENCE

## Victims: Domestic Violence Cards

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Under current law, law enforcement must refer victims of rape and other sexual assault crimes to counseling centers. Victims should have access to counseling services before an abusive relationship leads to rape or other violent crimes.

***AB 1201 (Murray), Chapter 698,*** expands the group of victims entitled to receive domestic violence cards to include a victim of dating relationship battery or corporal injury on a spouse. Particular information is required on the card. Specifically, this law:

- Requires existing local law enforcement policy to include the California Victims' Compensation Program and a contact number for the program on the written notice provided to victims at crime scenes.

- Adds language to avoid chaptering out AB 1115 (Knox), Chapter 456; AB 2172 (Sweeney), Chapter 701; and AB 2177 (Kuehl), Chapter 702.

## Domestic Violence: CLETS

Many criminal court protective orders are not entered into California Law Enforcement Telecommunications System (CLETS) when issued. Entry into the system allows law enforcement personnel to confirm the validity of such orders before enforcing them. If the order is not entered in the registry, law enforcement cannot verify its validity at the scene of an incident and the order cannot be enforced.

***AB 1531 (Shelley), Chapter 187,*** requires the court or its designee, within one business day of the issuance of specified criminal court protective orders, to enter the terms of the order into CLETS or transmit the order to law enforcement personnel authorized to enter the data into CLETS. Specifically, this new law clarifies the time frame within which the court is required to enter the order into CLETS, and also provides that, as an alternative, the court may transmit a copy of the order to local law enforcement for entry into CLETS.

## Criminal Procedure: Trial Date: Continuance of Proceeding

Existing law does not allow a brief continuance in a murder case when the deputy district attorney assigned to prosecute that homicide is engaged in another matter. As a result, complicated and sensitive cases must be “handed off”, often at the last minute, to another deputy district attorney unfamiliar with the case - an ineffective use of time and taxpayers’ money.

***AB 1754 (Havice), Chapter 61*****,** allows a court to continue a murder trial or hearing date for up to 10 court days when the assigned prosecutor has another trial or hearing in progress, and requires the court to make reasonable efforts to avoid scheduling a prosecutor's murder trial when he or she has another trial set.

## Domestic Violence: Engagement Relationship Battery

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A high percentage of domestic violence cases are perpetrated against girlfriends, ex-girlfriends, ex-spouses, and ex-cohabitants. Ninety-five percent of abuse victims are women.

***AB 1767 (Havice), Chapter 699,*** broadens the potential list of victims included within the misdemeanor offense of battery created for a person involved in a "dating relationship" to include a person with whom the defendant currently has or previously had an engagement relationship. This law expands authorization for warrantless arrests. This law also contains language to avoid chaptering out AB 247 (Scott), Chapter 224, and SB 1470 (Thompson), Chapter 182.

## Counseling: Children of a Batterer

The California Psychiatric Association notes, “Research shows that children who are the victims of, or witnesses to, domestic violence can suffer significant mental injuries and become batterers or victims themselves in adulthood as a result of witnessing the violence.” Counseling should be provided to these victims.

***AB 1837 (Alquist), Chapter 229,*** allows courts to order counseling in a custody case if there is any history of domestic violence among the parties involved. This new law applies to custody or visitation rights cases where counseling may be appropriate. Among other relevant factors, this new law directs the court to consider any domestic violence within the past five years.

## Domestic Violence: Officer Response

A victim must be able to safely escape his or her batterer. A victim should be able to request law enforcement to provide safe passage out of the victim's house. Responding officers on domestic violence calls should to arrange for victim transportation to a hospital if the victim is in need of treatment.

Additionally, peace officers must be trained to recognize the signs of domestic violence.

***AB 2172 (Sweeney), Chapter 701,*** adds to the list of responses required to be included in local enforcement policy on domestic violence. Specifically, this new law:

- Adds to the list of responses required to be included in local law enforcement policies on domestic violence emergency assistance to children.

- Adds language to prevent chaptering out AB 1201 (Murray), Chapter 698, and AB 2177 (Kuehl), Chapter 702.

**Stalking and Telephone Harassment Laws**

Stalkers are now using computers, faxes, and other means to invade the privacy and the rights of their victims.

***AB 2351 (Hertzberg), Chapter 826,*** expands current stalking and telephone harassment laws to cover contacts made through electronic communication devices such as computers. This law requires police officers to receive training in high-technology crimes and the Office of Criminal Justice Planning (OCJP) to conduct a feasibility study with respect to a state-operated center on computer forensics. Specifically, this law:

- Adopts the definition of "electronic communication device" (ECD) found in current federal law.

- Clarifies that the ECD definition applies to the credible threat and other provisions included in California's stalking law.

- Provides that an offense committed by means of an ECD medium, including the Internet, may be deemed to have been committed where the electronic communication was originally sent or was first viewed by the recipient.

- Clarifies that telephone calls or electronic contacts made in good faith are not punishable.

- Amends the police officer training provision so that high technology crimes training is mandated only for police officers or sheriffs at a supervisory level, and offered to all officers and sheriffs as part of continuing professional training.

- Appropriates $230,000 from the General Fund to the OCJP for the purpose of performing the feasibility study.

**Domestic Violence Courts**

Several California counties have established courts that hear only domestic violence cases in both the criminal and civil arena. The merits of these courts, as well as the effectiveness of domestic violence courts operating in other states, should be studied to if there is a need to establish domestic violence courts in each of California's 58 counties. Some counties operating domestic violence courts include Butte, Los Angeles, Napa, Placer, Sacramento, San Diego and Yolo. Some courts deal strictly

with criminal domestic violence matters and some deal with civil domestic violence cases as well. However, each court appears to have a different operational structure, which also should be studied and evaluated.

***AB 2700 (Kuehl), Chapter 703,*** requires the Judicial Council to study the various domestic violence courts in California and other states and submit its study to the Legislature by March 1, 2000. Specifically, the new law:

- Requires the Judicial Council to submit its report to the Legislature by March 1, 2000.

- Defines "domestic violence courts" as the assignment of civil or criminal cases involving domestic violence to one department of the superior or municipal court.

- Specifies that the study be a descriptive study of domestic violence courts and describes the policy and procedures used in domestic violence courts.

**Criminal Procedure: Territorial Jurisdiction**

Domestic violence, stalking, child abuse and molestation victims have high propensities of being repeat victims of the same criminal committing the same crime. The very nature of these crimes involves multiple jurisdictions. Trials for these crimes should be combined into one, reducing the number of trials a victim must testify at and the overall time victims are involved.

***AB 2734 (Pacheco), Chapter 302,*** vests territorial jurisdiction for specified offenses, such as spousal rape and stalking, that occur in more than one territorial jurisdiction in any jurisdiction where at least one offense occurred if the defendant and the victim are the same for all the offenses.

Specifically, this new law vests territorial jurisdiction for specified offenses (including spousal rape, rape in concert, child abuse, spousal abuse, sodomy, lewd and lascivious conduct with a child, oral copulation with a minor, and stalking) that occur in more than one territorial jurisdiction in any jurisdiction where at least one offense occurred if the defendant and the victim are the same for all the offenses.

**Civil Proceedings: Harassment**

Existing law allows a person who suffered harassment to seek a temporary restraining order (TRO) and an injunction prohibiting further harassment under the Civil Code. An employer whose employee has suffered violence or a credible threat of violence in the workplace may seek a TRO or injunction on behalf of that employee pursuant to the Workplace Violence Act. Existing law also allows for protective orders under the

Domestic Violence Prevention Act. Various conforming and technical changes need to be made.

***AB 2801 (Assembly Judiciary Committee), Chapter 485,*** makes various conforming and technical changes to these three types of restraining orders in order to provide consistency among the three. Specifically, this new law:

- Conforms service requirements and procedures for civil harassment orders and workplace harassment orders to Domestic Violence Prevention Act restraining orders.

- Includes the definition of "unlawful violence" and "credible threat of violence" in the definition of "harassment" regarding civil harassment protective orders.

- Adds "other named family or household members" to civil harassment protective order and workplace violence protective order provisions.

- Adds to existing law's (the Domestic Violence Prevention Act) definition of "abuse" (among other things, intentionally or recklessly causing bodily injury or sexual assault) any act that has been or could be enjoined by ex parte order as specified.

**Address Protection Program**

In Washington, a highly successful program has been operating since 1991. The program allows individuals who experienced certain types of domestic violence to keep their residential addresses confidential and provide substitute addresses for use by state and local agencies in public records. Currently, 800 individuals are participating in that program. One-half of those program participants are children and one-half are adult women, with a few male participants.

***SB 489 (Alpert), Chapter 1005,*** creates an address protection program patterned after a successful Washington program for victims of domestic violence, as defined by the Penal Code. Participants receive substitute addresses, mail forwarding service, and name and address confidentiality in marriage and voter records. Specifically, this new law:

- Requires the Secretary of State to provide substitute addresses for program participants and forward their mail to their actual addresses. For purposes of this program, "domestic violence" is defined as "the willful infliction of corporal injury resulting in a traumatic condition perpetrated against a spouse, cohabitant, or person with whom the perpetrator has a child".

- Requires an applicant to submit a statement of whether there are any existing court actions or orders involving child support, custody, or visitation to ensure the program is not used to avoid such obligations. Program participation

does not affect custody or visitation orders in effect prior to, or during, program participation and does not constitute evidence of domestic violence for purposes of making custody or visitation orders.

- Requires program participants to designate the Secretary of State as an agent for service of process and the Secretary of State to forward legal documents received to program participants within three days of receiving them.

- Provides immunity from liability for the Secretary of State and its employees for any action brought by any person injured as a result of the handling of mail on behalf of the program participant.

- Allows the Secretary of State or the address confidentiality program manager the ability to terminate a program participant's certification and invalidate his or her authorization card for various reasons. Reasons include the determination that false information was used in the application process or that participation in the program is being used as a subterfuge to avoid detection of illegal or criminal activity, apprehension by law enforcement, or custody or visitation orders. This law also makes a person who makes false claims in order to get into the program guilty of a misdemeanor.

- Requires a county clerk to keep such records confidential if requested by a program participant, unless requested by a law enforcement agency or by a court order to a person identified in the order.

- Sunsets the program on January 1, 2005 and requires the Secretary of State to submit a report to the Legislature detailing the total number of pieces of mail forwarded to program participants, the number of program participants, the average length of time a participant remains in the program and the targeted code changes needed to improve the program's efficiency and cost effectiveness.

- Provides that in order to qualify for confidentiality status, an application must be completed in person at a community-based victims' assistance program. The application must contain all of the following documents: (1) a police report indicating domestic violence; (2) a temporary or permanent restraining order; (3) proof of a stay of three or more nights in a domestic violence shelter facility in the last year; (4) a sworn statement from the applicant stating whether there are any existing court orders or court actions involving the applicant for child support, child custody, or child visitation to ensure that the program is not being used to avoid court-ordered obligations; and (5) a designation of the Secretary of State as an agent for purposes of receiving mail and other information that requires verification of receipt for individuals in the program.

- Provides the Secretary of State will accept applications beginning July 1, 1999.

**Criminal Procedure: Warrantless Arrest: Domestic Violence**

With arrests for domestic violence increasing significantly in recent years, it is imperative that the Legislature adopt statutes that effectively protect all potential victims. Past efforts were made to protect persons assaulted or battered outside a peace officer's presence. Under prior law, an officer could arrest a person accused of such a crime only if it was committed against a spouse, a cohabitant, or the parent of his or her child. This often left many would-be victims with no recourse but to make citizens' arrests or do nothing.

By expanding the class of protected persons listed in Penal Code Section 836(d) to include former spouses and cohabitants, present and former fiancés and fiancées, as well as certain other persons, a domestic violence victim will no longer have to decide between endangering his or her life to make a citizen's arrest or not involving the police.

Under Penal Code Section 836(c)(1), an officer may make a warrantless arrest if the officer has reasonable cause to believe that the person against whom a domestic violence restraining order has been issued has notice of the order and has committed an act in violation of the order. However, statute did not reference Penal Code Section 1203.097, which requires that the restraining order be issued as a condition of probation for domestic violence crimes against a person listed in Family Code Section 6211. This loophole must be closed by making those people subject to arrest under Penal Code Section 836(c)(1).

***SB 1470 (Thompson), Chapter 182,*** expands the class of potential domestic violence victims which authorizes the police to make warrantless misdemeanor arrests for offenses not committed in their presence to include:

- A former spouse;
- A former cohabitant, as defined;
- A person with whom the suspect is having or has had an engagement relationship;
- A person with whom the suspect has parented a child or is presumed to have parented a child pursuant to the Uniform Parentage Act;
- A child of the suspect;
- A child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act;

- A child of a person in one of the above categories; or,

- Any other person related to the suspect by consanguinity or affinity within the second degree.

This new law also provides an officer may make a warrantless, misdemeanor arrest for an offense not committed in his or her presence where such officer has reasonable cause to believe the suspect committed an assault or battery upon any of the above-listed classes of victims and the officer makes the arrest as soon as the reasonable causes arises.

**Discovery: Notice Requirement: Uncharged Acts**

A reduction of the notice period required for use of domestic violence priors under Evidence Code Section 1109 would significantly facilitate the prosecution of these cases. Often, it is only after long and diligent work by prosecutors that prior incidents of domestic violence in other counties or states are discovered, long after the 30-day notice requirement has expired.

Realistically, the "at least 30-days' notice requirement" has proved to be onerous and, often times, overly burdensome to the prosecution. In misdemeanor cases, a defendant in custody must be brought to trial within 30 days of the arraignment or entry of plea. Adherence to the existing law precludes the admissibility of uncharged acts of domestic violence committed by the defendant. In felony trials, the prosecution does often not know information about uncharged acts nor can the investigation be completed as to the existence of uncharged acts of domestic violence at least 30 days before the trial commences.

Proffered evidence consists of a defendant's conduct. In those cases where the prosecution is able to identify prior domestic violence acts or other victims of prior domestic violence, that evidence should be admissible and should not be a surprise when disclosed by the prosecution to the defense.

Amending the notice requirement is essential since the statutory trial date under Penal Code Section 1382(a)(3) is 30 days from the date of arraignment. Frequently, domestic violence victims do not immediately reveal instances of prior domestic violence and disclose this information only after several interviews. In those instances, the 30-day time limit preceding trial is often exceeded.

The time restriction is extremely prohibitive when prior convictions are located in other jurisdictions. Although Evidence Code Section 1109 gives the court discretion to admit the evidence after the 30-day notice period, most courts believe the 30-day notice requirement to be binding. Evidence of prior domestic violence acts is often critical to the fact-finder's understanding of the abuse and why a victim failed to leave the abuser.

Second, the state's domestic violence restraining order registry should be strengthened by including gun restriction information. Although federal legislation makes it illegal for any person the subject of a domestic violence protective order to be in possession of a firearm, California law contains no such restriction unless specifically ordered by the court or unless the person has been convicted of specified offenses. Inclusion of such information in the Domestic Violence Registry provides more accurate information to all law enforcement officers.

Last, current Penal Code Section 1203.097 language, which directs the disposition of funds obtained by the Controller under the minimum mandatory sentence for domestic violence convictions, needs be corrected. Current language creates difficulty in the administration of the reimbursement process to counties for entering domestic violence restraining order information costs. Current law requires the Controller to distribute one-half of the funds deposited in the Domestic Violence Fund (DVF) to counties. The distribution formula is based on the number of restraining orders issued and registered with the Department of Justice's (DOJ) Domestic Violence Restraining Order Registry. At the present time, counties are not receiving their due portion from the DVF.

***SB 1682 (Solis), Chapter 707,*** amends the time within which prosecutors are required to disclose evidence in domestic violence cases. This new law provides that certain firearm information must be transmitted to the DOJ with domestic violence information, as specified. SB 1682 revises the disbursement of funds collected from persons participating in batterers' programs. Specifically, this law:

- Requires statements of witnesses or a summary of the substance of any testimony expected to be offered disclosed in compliance with specified Penal Code provisions relating to the disclosure of information as part of the discovery process.

- Requires each county to electronically transmit to the DOJ the terms and conditions of any restrictions on the ownership or possession of firearms.

- Creates the Domestic Violence Restraining Order Reimbursement (DVROR) and the Domestic Violence Training and Education (DVTE) Fund, and requires the Controller to deposit monies in equal amounts received from fines assessed from a person convicted of domestic violence into these funds.

- Requires that monies deposited into these funds are available upon appropriation by the Legislature and must be distributed each fiscal year as follows: (1) funds from the DVROR Fund be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from specified notification requirements; and (2) funds from the DVTE Fund support the statewide training and education fund.

- Adds language to avoid chaptering out AB 1531 (Shelley), Chapter 187; AB 2177 (Kuehl), Chapter 702; and AB 2801 (Assembly Committee on Judiciary), Chapter 581.

**Stalking: Cyberstalking**

New “high-tech stalking” can take the form of threatening, obscene or hateful e-mail, pages, voice mail messages, etc. California was the first state in the nation to pass an anti-stalking law in 1990. Since then, every state in the nation has followed California's lead and has passed similar anti-stalking legislation and at least seven other states have already updated their laws to include electronic communication.

***SB 1796 (Leslie), Chapter 825,*** updates stalking and harassment laws to accommodate new technology. This new law clarifies that electronic communication devices include, but are not limited to, telephones, cellular telephones, computers, video recorders, televisions, fax machines, or pagers. Specifically, this new law:

- Expands the definition of "credible threat" in the tort of stalking to include threats communicated by means of an electronic communication device or a threat implied by a combination of verbal, written, or electronically communicated statements.

- Clarifies that the provisions of the “terrorist threat” offense apply to threats made by means of an electronic communication device.

- Expands the definition of "credible threat" in the stalking statute to include a threat performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written or electronically communicated statements and conduct, made with specified intent.

- Expands provisions of the offense related to harassing phone calls to include repeated contact by means of an electronic communication device with specified intent.

- Creates a good-faith exception for obscene or threatening telephone calls or electronic contacts made with intent to annoy.

- Provides that any offense committed by use of an electronic communication device or medium, including the Internet, may be deemed to have been committed where the electronic communication or communications were originally sent or first viewed by the recipient.

- Incorporates the definition of "electronic communication" device used in a specified provision of federal law.

# ELDER ABUSE

## Elder Abuse: Statute of Limitations

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When elders live at home, they often live isolated lives, dependent on caregivers for their daily needs.

A caregiver striking an elder is punished under Penal Code Section 368(b). However, if there is no witness to the crime, a beating may go unreported for a substantial period of time. However, Penal Code Section 802 requires that any complaint be filed within one year of a beating. Similarly, caregiver abuse in nursing homes may not be reported.

If a caregiver is taking checks or other valuables, the elder may not discover the theft for months. If the value of the stolen property amounts to a felony, Penal Code Section 803 makes the case viable. Otherwise, there is no recourse to either the state or the elder.

> ***AB 190 (Napolitano), Chapter 944,*** extends the statute of limitations to five years for elder abuse crimes not involving theft or embezzlement, and clarifies that the statute of limitations for elder abuse financial crimes does not begin until the date of discovery.

## Elder Abuse: Targeting the Elderly

As written, statute only targets a small fraction of those who financially abuse the elderly. For example, Penal Code Section 368(c) is limited to “caretakers” - any person who has the care, custody, control of, or stands in a position of trust with an elder or dependent adult.

Statute does not extend to persons who target the elderly with home repair, roofing, utility and telemarketing scams; fraudulent auto crashes; mortgage and annuity fraud; “bunco” schemes; and fraudulent marriages. In addition, statute does not extend to family members who financially abuse elderly relatives but are not “caretakers”. Persons commit these offenses must be prosecuted under general theft statutes, which carry lower penalties and do not identify perpetrators as abusers.

> ***AB 880 (Hertzberg), Chapter 934,*** expands criminal sanctions for offenses pertaining to financial abuse of the elderly and dependent adults to apply to all persons, not just caretakers. Specifically, this law provides that any person not a caretaker who violates any provision of law proscribing theft or embezzlement with respect to the property of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punished, as specified, based on the value of the money, labor, or property taken:

- If the loss exceeds $400, the offense is a felony, punishable by two, three or four years in state prison, or up to one year in the county jail.

- If the loss is less than $400, the offense is a misdemeanor, punishable by up to one year in the county jail and a fine up to $1,000.

**Elder Abuse: Reporting Requirements**

An estimated 225,000 incidents of elder abuse occur annually. However, in 1996 only 44,000 (20 percent) of these were reported.

***AB 1780 (Murray), Chapter 980,*** adds "neglect, financial abuse, abandonment, and isolation" to the list of incidents that constitute a reportable elder abuse or dependent abuse condition. This law expands the definition of "mandated reporter," as specified.

The new law provides that any mandated reporter who willfully fails to report physical abuse, isolation, financial abuse or neglect of an elder or dependent adult where that abuse results in death or great bodily injury is punishable by an increased penalty of up to one year in a county jail or by a fine of up to $5,000, or imprisonment in the state prison.

This new law:

- Expands the definition of mandated reporter to specify that any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, or any elder or dependent adult custodian, whether or not that person receives compensation, is a mandated reporter.

- Specifies that any mandated reporter who reasonably suspects an elder or dependent adult has suffered physical abuse, abandonment, isolation, financial abuse, or neglect must report the abuse to the proper agency by telephone immediately or as soon as practically possible, and by written report within two days.

- Specifies a mandated reporter is not required to report a suspected incidence of abuse when all of the following conditions exist: (1) the mandated reporter was told by an elder or dependent adult that he or she has experienced physical abuse, abandonment, isolation, financial abuse, or neglect; (2) The mandated reporter is not aware of any independent evidence that corroborates the elder or dependent adult's statement; (3) the elder or dependent adult has been diagnosed with a mental condition or is the subject of a conservatorship because of a mental condition; and (4) the reporter reasonably believes the abuse did not occur.

- Specifies that a mandated reporter in a long-term care facility is not required to report a suspected incidence of abuse when all of the following conditions exist: (1) the mandated reporter is aware that there is a proper plan of care that was properly provided or executed; (2) a physical, mental, or medical injury occurred as a result of that care; (3) the mandated reporter reasonably believes that the injury was not the result of abuse. This law is not to be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This law apply only to those categories of mandated reporters that Department of Health Services (DHS) determines, upon approval by the Bureau of Medi-Cal Fraud and the state Long-Term Care Ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions, as specified, have been met.

- Requires reports of known or suspected criminal activity in a long-term care facility sent to the local ombudsman or law enforcement agency to also be forwarded to the DHS and the Bureau of Medi-Cal Fraud.

- Requires the Bureau of Medi-Cal Fraud to provide training to employees of the DHS, Department of Social Services (DSS), county adult protective services (APS) agencies, Long-Term Care Ombudsman, and local law enforcement in determining when to refer a report of known or suspected abuse in a long-term care facility for possible criminal action.

- Makes the failure to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this law, a misdemeanor, punishable by up to six months in the county jail and/or by a fine up to $1,000. Any mandated reporter who willfully fails to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this law, where that abuse results in death or great bodily injury, is punishable by up to one year in a county jail and/or by a fine up to $5,000.

## Volunteers: Seniors

An actual employment relationship must exist in order for California's laws governing wages, hours, and working conditions to apply to volunteers. Thus, even if a public agency has an employee who falls within a mandatory retirement exception, the agency has no such obligation to mandatorily "retire" a senior volunteer willing to serve the public in a non-employment capacity.

***AB 2418 (Olberg), Chapter 188,*** requires any state or local agency that chooses to utilize volunteers to implement a policy whereby no person aged 60 years or older may be excluded from volunteer service if the person is physically, mentally, and professionally capable of performing the services involved.

## Elder and Dependant Adult Abuse

One of the reasons elder and dependent adult financial abuse is a growing crime (other than the increase of the elder population) is the opportunity for financial benefit with little danger and consequence.

***SB 1715 (Calderon), Chapter 935***, precludes persons who commit elder or dependent adult abuse from inheriting from those deceased elder or dependent adult victims in defined situations, increases the punishment for false imprisonment of an elder or dependent adult in certain situations, and allows a conservatorship court to consider any elder or dependent adult abuse implications before approving a financial decision. Specifically, this new law:

- Prohibits a person convicted of criminal elder or dependent adult abuse or false imprisonment from inheriting or receiving via a trust any property from his or her deceased victim and from serving as a fiduciary related to such property unless the decedent was substantially able to manage his or her financial resources and to resist fraud or undue influence, as defined.

- Prohibits a person shown by clear and convincing evidence to have committed elder or dependent adult abuse and acted in bad faith from inheriting or receiving via a trust any property from his or her deceased victim where the victim was substantially unable to manage his or her financial resources or to resist fraud or undue influence.

- States the court in a conservatorship situation may consider in deciding whether to authorize specified financial transactions for a conservatee whether a beneficiary has committed physical abuse, neglect, false imprisonment, or fiduciary abuse against the conservatee after the conservatee was substantially unable to manage his or her financial resources or resist fraud or undue influence.

- Increases the punishment for false imprisonment of an elder or dependent adult by violence, menace, fraud or deceit from imprisonment in either the county jail for up to one year or in the state prison for 16 months, 2 or 3 years to imprisonment for 2, 3, or 4 years.

- Makes certain legislative findings regarding elders and dependent adults.

- Contains language to avoid chaptering out portions of AB 880 (Hertzberg), Chapter 934.

## Residential Care Facilities: Home Health Care

Certified home health aides (CHHAs) and certified nurse assistants (CNAs) who already have been cleared through the more rigorous DHS criminal screening process should be allowed to work in residential care facilities without having to receive a second clearance through DSS, thus streamlining the background clearance process.

> ***SB 2194 (Wright), Chapter 831,*** clarifies criminal clearance requirements for nurse assistants and home health aides. Specifically, the new law deems CNAs and CHHAs, by virtue of their certification, meet the criminal clearance requirements that apply to persons providing care in residential care facilities for the elderly, residential care facilities for persons with chronic ill-threatening illnesses, and adult community care facilities. This law requires CNAs and CHHAs to provide copies of their certifications to facilities where they provide service and requires facilities to keep copies on file. The new law also removes an exemption from fingerprinting requirements for staff of social rehabilitation facilities.

## Elder and Dependent Adult Abuse

According to DSS and the United States General Accounting Office, an estimated 225,000 incidents of adult abuse occur annually in California, but only 44,000 (less than one-fifth) are reported. The United States Census Bureau projects that the state's elderly population will more than double in the next 20 years (from 3.3 million to over 6.6 million by the Year 2020).

Unlike with child protective services, the state's service and reporting standards in adult protective services are almost non-existent. Mandatory reporting requirements are limited to reporting physical abuse. Other types of abuse, such as forced isolation, neglect, and financial exploitation, are not required to be reported. Moreover, the county service mandate is limited to receiving reports; they are not required to provide any emergency/treatment services or even investigate these reports.

> ***SB 2199 (Lockyer), Chapter 946,*** reforms both of the state's elder and dependent adult reporting laws and APS program. This new law not only expands the mandatory reporting law to cover isolation, neglect, and financial exploitation, but also sets minimum statewide standards for service in all counties.
>
> Commencing May 1, 1999, SB 2199 expands and redefines reporting requirements regarding elder or dependent adult abuse, and creates various APS programs in all counties contingent upon funding. Specifically, this new law:
>
> - Expands mandated reporting requirements for suspected instances of abuse of an elder or dependent adult to include numerous types of abuse other than

physical abuse, and redefines and expands the list of persons who are mandated reporters.

- Enacts enhanced APS provisions that are implemented only to the extent funds for this enhancement are provided in the annual Budget Act, including: (1) a hotline, continually operational; (2) responding to all reports of elder abuse; (3) providing victims of elder or dependent adult abuse with case management services, including investigation, assessment and a service plan; (4) the coordination of community resources to provide victims with comprehensive treatment; and (5) providing emergency services such as shelter, food and aid.

- Redefines "neglect" to include when the elder or dependent adult himself or herself negligently fails to exercise that degree of care that a reasonable person in similar position would exercise.

- Adds to the list of "care custodians: (1) adult day care; (2) agencies providing nutrition services or other home and community-based support services; (3) designated area agencies on aging; and (4) any other sectarian, mental health or advocacy agency, or person providing health services or social services to elders or dependent adults.

- Adds "public guardians" to the list of those included in a multi-disciplinary personnel team who provide services related to dependent and elder abuse.

- Broadens and redefines "abuse," "adult protective services," and "care custodian" for purposes of these provisions, and revises provisions relating to the reporting of abuse by a mandated reporter, a local ombudsman, and an adult protective services agency.

- Provides for the Bureau of Medi-Cal Fraud to provide training regarding when to report a suspected instance of abuse for potential criminal action.

- Provides the Director of DSS adopt regulations to implement this law no later than January 31, 2000, and allows DSS to implement the provisions in this law in the meantime through an all-county letter or similar instructions.

- Makes certain findings regarding elder or dependent adult abuse and the insufficiency of resources dedicated to such problems.

- Provides this law will be implemented only to the extent funds are provided in the annual budget act.

- Makes other technical and conforming changes, and contains language to avoid chaptering out AB 1780 (Murray), Chapter 980.

# EVIDENCE

## Sex Offenses: Evidence

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An accused rapist's trial must focus on relevant facts and evidence rather than the victim's character. The admission of evidence as irrelevant as the style of a victim's dress or the length of the victim's skirt could mitigate an alleged violent sexual criminal's guilt.

> ***AB 1926 (Wildman), Chapter 127,*** provides that in enumerated cases alleging sexual offenses, evidence of the way the victim was dressed at the time of the crime is not admissible when offered by either party to prove consent unless the court determines the evidence is admissible. This law also provides the "manner of dress" does not include the condition of the victim's clothing before, during, or after the commission of the offense. This law prevents findings of consent based solely on the manner of the victim's dress.

## Evidence: Proof of the Content of Writing

Law relating to the proof of the content of a writing in a civil or criminal action or proceeding provides that "…except as otherwise provided by statute, no evidence other than the original of a writing is admissible to prove the content of a writing." This is known as the "best evidence rule". The best evidence rule does not apply to criminal preliminary examinations.

In the California Law Revision Commission's recommendation to replace the best evidence rule with the secondary evidence rule, the Commission states in part, "In yesterday's world of manual copying and limited pretrial discovery, it served as a safeguard against misleading use of secondary evidence. Under contemporary circumstances, in which high quality photocopies are standard and litigants have broad opportunities for pretrial inspection of original documents, the Best Evidence Rule is no longer necessary to protect against unreliable secondary evidence. In addition, admissible secondary evidence costs now outweigh its benefits."

At one time, the best evidence rule prevented fraud; the Commission believes that this is no longer valid and notes, "…even where the Best Evidence Rule applies it may often be ineffective in preventing fraud. A litigant may fabricate secondary evidence and manufacture an excuse satisfying one of the rule's exceptions." The Commission's report also notes that with the advent of new technologies, such as scanning and manipulating signatures, it is easier for a litigant to create false evidence and introduce that evidence as "original".

Reducing the possibilities of misinterpretation of writings was another reason supporting the best evidence rule. The Commission report states that while preventing misinterpretation of writings is an important goal, modern discovery "undermines this as

a justification for the Best Evidence Rule. Because litigants are able to examine original documents in discovery, they can discern inaccuracies and fraudulent tampering before trial, rather than unearthing such problems through the Best Evidence Rule in the midst of the trail." The Commission believes that the best evidence rule is not the only protection against fraud and misinterpretation and believes that a party is motivated to present the most convincing evidence to support his or her case – using secondary evidence with no reasonable explanation will likely discount its probative value.

According to the Commission report, the best evidence rule is an inefficient use of judicial time when determining what is the original document in a complicated case involving new technologies, can result in the exclusion of reliable evidence, lead to costly appeals, and may add to litigation costs by causing a litigant to expend time and resources finding the "original" in order to avoid a best evidence objection.

In light of the broad exceptions to the best evidence rule, the Commission asserts that adoption of the secondary evidence rule will not make a dramatic change in existing practice and makes the law more straightforward, efficient, and equitable.

When considering the many exceptions to the best evidence rule combined with the duplicate original doctrine, it is more likely that a document will be proved in evidence by use of a copy rather than the original. Furthermore, the Commission contends that creating any further exceptions to the rule is not an option.

> ***SB 177 (Kopp), Chapter 100,*** repeals the best evidence rule which requires the original of a writing to be officered in evidence to prove the content of the writing, and replaces it with the secondary evidence rule which provides that the content of a writing may be proved by otherwise admissible secondary evidence. Specifically, this new law:
>
> - Repeals the best evidence rule and replaces it with the secondary evidence rule which provides that the content of a writing may be proved by otherwise admissible secondary evidence unless: (1) a genuine dispute exists concerning material terms of the writing and justice requires the exclusion of the evidence; or (2) admission of the secondary evidence is unfair.
>
> - Provides that at a preliminary examination, the content of a writing may be proved by an otherwise admissible original or otherwise admissible secondary evidence.

**Public Safety Officers: Evidence**

Current law contains a loophole which allows management, without penalty or liability, to alter or destroy evidence in a disciplinary proceeding against a peace officer.

***SB 1600 (Rainey), Chapter 759,*** establishes that tampering or destroying any evidence to be used in a disciplinary proceeding against a public safety officer for the purpose of harming that officer is a misdemeanor.

# GANG PROGRAMS

## Gangs: Schools: San Fernando

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On February 6, 1997, the Centers for Disease Control and Prevention issued a report confirming that the United States has the highest rate of childhood homicide, suicide and firearms-related deaths of any of the world's wealthiest nations. Nearly 75 percent of child murders in the industrialized world occurs in the United States. In California, gangs and juvenile crime remains a significant problem. For example, there were 52 gang-related homicides in the San Fernando Valley in 1992.

In particular, the Community in Schools of San Fernando Valley (CISSFV) appeared to make a difference in gang-related murders in the San Fernando Valley. The CISSFV program and its staff was key in establishing a gang peace treaty. In the first five months of the truce, there was a 70-percent drop in gang-related homicides. In 1996, there were only 18 gang-related murders in the Valley – one-half the number of the previous year.

A model should be developed and replicated for reducing gang activities and recidivism by studying the CISSFV program.

> ***AB 2650 (Cardenas), Chapter 484,*** requests a study of the CISSFV program's impact on gang violence and makes legislative findings regarding the CISSFV program. $100,000 has been appropriated from the General Fund to California State University to conduct the study.

## The California Gang, Crime, and Violence Prevention Partnership Program: Tattoo Removal Program

AB 963 (Keeley), Chapter 883, Statutes of 1997, created the Gang, Crime, and Violence Prevention Partnership Program to provide grants to violence prevention groups working in state communities.

Community-based organizations should be allowed to use such grants for violence prevention work inside juvenile detention centers by providing continuous services for those entering the juvenile justice system.

Additionally, due significant interest shown in the tattoo removal program [SB 426 (Hayden), Chapter 907, Statutes of 1997] by health clinics, community-based organizations and volunteering, more tattoo removal lasers should be funded.

> ***SB 1700 (Hayden), Chapter 842,*** makes state and local juvenile detention facilities eligible for the California Gang Crime and Violence Prevention Partnership Program services and permits community-based organizations to use such grants for violence prevention work inside juvenile detention centers.

This law also expands the tattoo removal program created by SB 526 (Hayden), Chapter 907, Statutes of 1997, and funds four new tattoo removal lasers.

## Criminal Street Gangs: Nuisance

Under current law, every building or place used by gang members for the purpose of committing specified felonies is a nuisance that can be abated. The court may order damages and assess a civil penalty. However, no civil penalty may be assessed against a person unless that person knew or should have known of the unlawful acts.

The Attorney General should be permitted to bring a nuisance action to recover damages from street gang members on behalf of a community injured by the gang's unlawful activity whenever an injunction has been issued to abate gang activity constituting a nuisance. Any recovered damages would be deposited in a separate segregated fund for payment to the governing body of the community affected by the nuisance.

***SB 2034 (Lockyer), Chapter 601,*** provides that whenever an injunction is issued to abate gang activity constituting a nuisance, the Attorney General (AG) may maintain an action for money damages on behalf of the community injured by that nuisance. Specifically, this new law:

- Provides that whenever an injunction is issued to abate gang activity constituting a nuisance, the AG may maintain an action for money damages on behalf of the community or neighborhood injured by that nuisance.

- States that any damages awarded must be paid by or collected from the assets of the criminal street gang or its members that were derived from the criminal activity.

- Provides that only persons who knew or should have known of the unlawful acts are personally liable for the payment of the damages awarded.

- Allows the AG to use the testimony of expert witnesses to establish damages suffered by the community or neighborhood injured by the nuisance.

- Requires that damages recovered be deposited into a separate segregated fund and these assets only be used to benefit the community or neighborhood injured by the nuisance.

# HATE CRIMES

## Civil Rights: Vandalsim

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Recently in San Francisco, vandals etched swastikas into the glass storefronts of about one dozen small businesses, apparently aimed at people of Asian descent. This type of "tagging" is not a simple prank and only serves to intimidate and frighten individuals.

> ***AB 1450 (Shelley), Chapter 850,*** requires mandatory community service, in addition to existing penalties, for any person who damages another's property because of his or her race, color, religion, ancestry, national origin, disability, gender, or sexual orientation.
>
> Specifically, this new law requires that a defendant convicted of hate-related vandalism, in addition to existing penalties, perform a minimum of 400 hours of community service over a period of 350 days during a time other than hours of employment or school attendance.

## Hate Crimes: Gender

Hate crimes are acts of violence or terrorism directed at an individual victim because of that individual's perceived association with a group or community. While each incident is generally directed toward a targeted victim, a larger group or community of people are also affected by the same incident. While hate crimes based upon actual or perceived gender and actual or perceived sexual orientation are included in California's hate crime statutes and hate crimes against transgendered persons can legally be prosecuted under those statutes, only a few district attorneys (such as Los Angeles and San Francisco) are actually pursuing these charges. Clarification should be made for prosecutors.

> ***AB 1999 (Kuehl), Chapter 933,*** amends current hate crime statutes not including gender as a category to include gender to the list of groups in which the victim's membership entitles the victim to protection, and defines "gender" for purposes of the affected statutes.
>
> This new law revises the definition of "gender" to mean the victim's actual sex or the defendant's perception of the victim's sex; and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth.
>
> This new law adds gender to the list of race, color, religion, nationality, country of origin, ancestry, disability, and sexual orientation as the basis for which a defendant must receive a prison sentence enhancement of one, two, or three years if he or she committed a felony because the victim had, or the defendant

perceived that the victim had, one of the above-listed characteristics. Similarly, this law provides for an enhancement if the defendant has a prior hate crime conviction and requires that the defendant's gender bias motivation must be a cause in fact or a substantial factor in the offense.

## Hate Crimes

Statewide, hate crimes have risen over 17 percent in the last two years. Additionally, 60 percent of all hate crimes are race motivated.

In Lodi, California, a cross was burned at Tokay High School the day after Martin Luther King, Jr. Day. Lodi and San Joaquin County authorities discovered that one suspect was a self-declared white supremacist and wanted his actions to send a “wake-up call' to the Caucasian students at the school to reject the multi-cultural awareness students were working toward. The district attorney could only charge the suspects with a misdemeanor.

***SB 1404 (Johnston), Chapter 414,*** amends the Penal Code to include as a specified offense the burning, desecrating, or destroying of a cross or other religious symbol on school property with the intent of threatening any individual who attends or works at, or is otherwise associated with, a school (defined as primary, elementary, junior or high school). This new law provides for either a misdemeanor (up to one year in county jail and/or $5,000 fine) or felony (16 months, 2 or 3 years in state prison and/or a $10,000 fine) penalty.

# JUDGES, JURORS AND WITNESSES

## Concealed Firearms: License to Carry

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The annual renewal of carry licenses for judges, court commissioners and magistrates of courts of record should be extended for up to three years. These individuals have a continuing justification for licenses and are significantly less likely to have criminal records.

***AB 1795 (Runner), Chapter 110,*** increases the time periods for certain pistol carry licenses and exempts from public disclosure certain information on license applications and issued licenses. Specifically, this law increases the valid duration period for licenses to carry pistols, revolvers, and other firearms capable of being concealed upon a person ("pistol carry licenses") from one year to up to three years for judges and full-time court commissioners or magistrates of federal and California courts.

This law also provides that home addresses and telephone numbers of peace officers, judges, magistrates and full-time court commissioners of California courts of record and the federal courts on applications for pistol carry licenses, as well as the pistol carry licenses themselves, are exempt from disclosure pursuant the existing California Public Records Act.

## Obstruction of Justice: Judicial Officers

Current law contains a loophole allowing some individuals in positions of authority to avoid prosecution for sexual harassment and the obstruction of justice.

***AB 1922 (Firestone), Chapter 512,*** creates a misdemeanor offense applicable to every judicial officer, court commissioner, referee, or any person authorized by law to hear or determine any question or controversy who commits any act that he or she knows or should have known perverts or obstructs justice or the due administration of the laws, punishable by 16 months, 2 or 3 years in state prison or by up to one year in the county jail. The new law does not prohibit prosecution for conspiracy, as defined, or any other law.

## Trial Court Funding

Last year, the Legislature created a stable, long-term funding approach for trial courts by requiring the state to assume major funding responsibility. The Lockyer-Isenberg Act requires annual contributions at capped levels by counties, with the state assuming future cost responsibility.

***AB 1935 (Aroner), Chapter 1004***, enacts various refinements to the Lockyer-Isenberg Trial Court Funding Act of 1997 [AB 233 (Escutia), Chapter 850, Statutes of 1997].

This new law adds various non-controversial trial court funding provisions. Specifically, this law:

- Adds forfeited jury fees to the fees required to be deposited into the Trial Court Trust Fund [also provided for in SB 1520 (Kopp), Chapter 1003].

- States legislative intent that fees be remitted by the courts as soon as possible following collection, and requires Judicial Council to study improved collection and remittance of revenues and make recommendations to the Legislature.

- Makes changes to the required Judicial Council report related to trial court unification, and requires Judicial Council to establish a process to assess the effectiveness of already unified courts.

- Changes one county's due dates for installment payment.

- Allows a county to loan money to trial courts, as specified, subject to Judicial Council's approval.

- Prohibits a judge from authorizing any expenditures in excess of the budget authorized by Judicial Council, requires the Administrative Director of the Courts to notify Judicial Council of any violation of this prohibition, and authorizes Judicial Council to appoint a person to manage the expenditures of that court.

- Requires trial courts and counties to enter into written contracts on the use and provision of county services beginning in 1999-2000, as specified.

- Adds double-joining language and technical/clean-up language.

## Crimes Against Public Officials

Jurors, peace officers, prosecutors, judges and other public officials face ever-increasing personal attacks in retaliation for carrying out their official duties. In addition, criminals are now targeting families as well.

***AB 2154 (Pacheco), Chapter 748,*** adds peace officers, non-elected public defenders, prosecutors and their families to statute, with severe penalties for assault or attempted murder on elected public officials. This law provides an attempted murder on a peace officer, public defender and prosecutor is punishable by 15 years-to-life and provides that an assault on a peace officer,

public defender or prosecutor is an alternate felony/misdemeanor. Specifically, this new law:

- Expands the list of public officials under applicable alternate felony/misdemeanor penalties relating to the assault of the public official in retaliation for, or to prevent the performance of, the victim's official duties.

- Expands the list of public officials relating to the attempted murder in retaliation for, or to prevent, the performance of official duties, punishable by a term of 15 years to life and such person is not eligible for parole for a minimum of 15 years.

- Adds to the list of "public officials": (1) a former judge of any local, state or federal court of record; (2) any prosecutor or assistant prosecutor of any local, state or federal prosecutor's office; (3) a former prosecutor or assistant prosecutor of any local, state, or federal prosecutor's office; (4) an assistant public defender of any local, state, or federal public defender's office; (5) a former public defender or assistant public defender of any local, state, or federal public defender's office; (6) any peace officer; and (7) any juror in any local, state or federal court of record, or the immediate family of any of these officials.

- Defines "immediate family" and "peace officer".

**Courts: Requirements**

A shortened jury term encourages more efficient use of jurors and provides jurors with knowing they are immediately utilized on juries or their time spent in a jury assembly room will not exceed one day.

***SB 1947 (Lockyer), Chapter 714,*** implements recommendations of Judicial Council's Blue Ribbon Commission on Jury System Improvement requiring Judicial Council to adopt a Rule of Court requiring every trial court, by January 2000, to limit jury service for all jurors to either one trial or one day on call. Counties which demonstrate good cause why such a requirement is impractical are exempt.

**Arrest Warrants: Electronic Mail**

Law enforcement's need for a warrant often occurs during times that do not coincide with a court's normal hours of operation. In these instances, law enforcement agencies, including local police departments and county sheriffs, must contact judges at home in order to obtain the authorization needed to secure search or arrest warrants.

Current law permits requests for warrants, which can consist of a declaration and other supporting documentation (including lengthy witness statements and affidavits), to be

sent to judges at their homes using facsimile machines. Although the use of facsimile machines for after-hour warrant requests has been helpful to both judges and law enforcement personnel, lengthy faxes can be time-consuming and are prone to problems such as missing pages and poor or illegible reproductions.

In addition, many judges do not have fax machines at home.

E-mail transmission is not only more convenient, but permitting its use reduces the time involved in transmitting warrant documentation and permits judges more time to review and decide whether to issue warrants. Further, turn-around time for law enforcement personnel working on time-critical criminal investigations would be improved.

> ***SB 1970 (Schiff), Chapter 692,*** authorizes the magistrate to take a written declaration in support of a warrant of probable cause for an arrest via electronic mail (e-mail) under specified conditions, and to take the oral statement of the person seeking the warrant or any witness that he or she produces by using the telephone and e-mail, as specified.

## Grand Jury Reports

In California, the grand jury performs three investigatory functions: hear criminal complaints, oversee local government operations, and investigate citizen complaints regarding local government misconduct or inefficiency. Grand juries are authorized in statute to investigate the operations of counties, cities, joint powers agencies, special districts, housing authorities, and any nonprofit corporation established by an entity the grand jury is authorized to investigate.

Traditionally, a grand jury operates in secret, releasing only a final report. Additional flexibility in releasing civil, non-privileged evidence is necessary to improve civil grand jury effectiveness so long as release does not violate a legal privilege and is approved by the presiding judge of the superior court or by the judge charged with supervising the grand jury.

During the 1996-97 term, the Los Angeles County Grand Jury resolved to evaluate the grand jury system itself. Their 1996-97 Final Report expressed frustration that current case law, McClatchy Newspapers v. Superior Court (1988) 44 Cal.3d 1162, prevents a grand jury from releasing raw evidentiary material, such as audit reports compiled at county expense.

The Los Angeles County Grand Jury was not permitted to publish an audit which proved a government agency was owed millions of dollars because the audit was deemed raw evidentiary material. As a result, the government agency had to spend several thousand dollars and many months to replicate the results of the Grand Jury audit in order to collect the money.

***SB 2100 (Polanco), Chapter 79,*** allows a grand jury to release non-privileged evidence along with its final report in any civil grand jury investigation. Specifically, this new law:

- Allows a grand jury, with the approval of the presiding judge, to make available to the public evidentiary material, findings, and other information relied on for its final report in any civil grand jury investigation provided the material is not subject to privilege.

- Prohibits the release of the name of any person or facts that lead to the identity of any person who provided information to the grand jury.

- Authorizes a judge to require that any part of the evidentiary material, findings, or other information be redacted or masked prior to its release to the public.

- Declares the Legislature's intent to encourage full candor in testimony in civil grand jury investigations by protecting the privacy and confidentiality of those who participate in the investigation.

## Depositions

Instant visual display technology immediately translates shorthand court reporter symbols using a laptop computer, reducing the time for a court reporter to produce a transcript draft. In addition, a court reporter with a translated draft can add notations or corrections the very same day of the oral deposition. According to the California Court Reporters, the majority of court reporters are using instant visual display technology for trial and deposition work. However, not all reporters bring display laptops to actual depositions. When an instant read-out of testimony is desired, the court reporter should have the proper equipment and all parties should receive notice.

A clear criteria determining whether a court reporter should or should not continue taking testimony after a party requests to go "off the record" must be established. According to the California Court Reporters Association, it is common practice for attorneys and their clients to go "off the record" while not directly invoking their right to pursue protective orders from the court by simply requesting to "go off the record." However, occasional conflicts emerge between opposing parties when determining whether or not to stop proceedings. In these situations, court reporters have no clear statutory direction. Taking testimony should not be stopped by a request to go "off the record" unless the deposing party and the deponent agree to do so or unless a party demands to stop the in order to seek a court protective order.

A procedure certifying an oral deposition transcript should be established. The deposition officer should send a copy of the original testimony transcript to all attending parties so they have the transcript available for reading, correcting, and signing. A deponent may then change the form or the substance of the answer to a question and

may either approve the transcript of the deposition by signing it or refuse to approve the transcript by not signing it.

***SB 2145 (Maddy), Chapter 875,*** clarifies various deposition procedures. Specifically, this new law:

- Clarifies that testimony during a deposition is not suspended unless the deposing party and the deponent agree to the suspension or any party of the deposition demands an adjournment of the proceedings in order to seek a motion for a protective order.

- Expands the written notice of a deposition to include requests for instant visual display technology and removes redundant language regarding the procedure for certifying official transcripts of testimony which include corrections.

- Clarifies that deposition notices which indicate an intent to record by stenographic method through instant visual display of testimony be submitted to the deposition officer. This law also requires the deposition officer, at the deposition, to offer to provide the instant visual display of testimony or to provide rough draft transcripts to any party if such an offer was made to, or accepted by, any party prior to the deposition.

# JUVENILES, FACILITIES, AND PROGRAMS

## Crime Victims: Criminal Procedure

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A child who is a serious or violent crime victim cannot give testimony out of the presence of the accused attacker via a closed-circuit television monitor. Additionally, a child can incur additional trauma testifying in a public courtroom.

> ***AB 1077 (Cardoza), Chapter 669,*** authorizes the testimony of a child 10 years of age or younger and the victim of a violent crime to be taken in another place and communicated to the courtroom by means of closed-circuit television.

## Dependent Children

Welfare and Institutions Code sections dealing with dependency matters reference “probation officers”. However, in practice, probation officers no longer deal with dependency matters and these duties have long been assumed by social workers. Similarly, throughout the Welfare and Institutions Code, children are referred to as "minors." However, references are made to the "child" in corresponding Rules of Court.

Pursuant to Chapter 21, Statutes of 1977, San Mateo and Shasta Counties became demonstration counties with regard to processes and procedures for adjudging a child to be a court dependent. Pursuant to Chapter 1485, Statutes of 1987, demonstration project approaches were adopted statewide, thereby terminating special funding for the demonstration counties.

In the mid-1970's, counties started to shift dependency cases from probation to social services departments as a result of federal funding contingent on such cases not being under juvenile justice agency jurisdiction. At present, there are no California counties using probation officers in dependency matters. However, code sections involving dependency have not been updated to reflect current practice and continue to reference “probation officers”.

> ***AB 1091 (Assembly Judiciary Committee), Chapter 1054,*** makes various technical conforming changes relating to the handling of dependency matters. Specifically, this new law:
>
> - Replaces or adds all references to "probation officers" with "social workers" in relation to dependent children.
>
> - Eliminates the distinction between children adjudged dependents of the court based on a pre- or post-January 1, 1989 basis.
>
> - Changes the word "minor" to "child" throughout the Welfare and Institutions Code dependency section.

- Is double-joined with AB 2773 (Assembly Human Services Committee), Chapter 1056; SB 1482 (Rosenthal), Chapter 255; and SB 1901 (McPherson), Chapter 1055.

## County Community Schools and Juvenile Court Schools

SB 1095 (Lockyer), Statutes of 1997, created a new program for first-time juvenile offenders at the highest risk of becoming repeat offenders. Funding restrictions on probation officer contracting by county offices of education should be eliminated.

***AB 1757 (Bowler), Chapter 125,*** eliminates funding restrictions for county offices of education in contracting probation officers. Specifically, this law eliminates an existing restriction that county offices limit costs charged for probation officers to no more than the number of probation officers they had funded in the 1988-89 fiscal year.

## Alcohol and Drug Treatment for Adolescents

Families are in need of assistance to manage and treat adolescent and youth problems associated with drug and alcohol abuse. The California School Nurses Organization (CSNO) argues that early identification of drug use can lead to early intervention and treatment. CSNO argues that arresting increasingly large numbers of youngsters for drug use has no apparent effect on prohibiting adolescents from using and abusing alcohol and drugs. The Union of American Physicians and Dentists argues that many young people who commit crimes are under the influence of alcohol and drugs and have serious substance abuse problems.

***AB 1784 (Baca), Chapter 866,*** creates the Adolescent Alcohol and Drug Treatment and Recovery Program. Funding for this new law has been made to the Department of Alcohol and Drug Programs (DADP) pursuant to Schedule (a) of Item 4200-101-0001 of the Budget Act of 1998. Specifically, this new law:

- Requires the DADP to establish community-based alcohol and drug recovery youth programs in collaboration with counties and local law enforcement to intervene and treat the problems of alcohol and drugs among youth.

- States findings regarding the extent of substance abuse in California and the United States.

- Requires the DADP to convene representatives of the Office of Criminal Justice Planning (OCJP), the California Youth Authority (CYA), the Managed Risk Medical Insurance Board, the Department of Education, DSS, and other agencies DADP deems appropriate.

## Personal Information: Minors

Current law provides no statutory requirements preventing an organization from disseminating children's names and addresses to registered sex offenders. Most organizations do employ some type of screening process prior to dissemination. Industry standards should be codified.

In addition, a parent should have the ability to remove a child's name and address from an organization's list.

***AB 1792 (Havice), Chapter 763,*** provides there is misdemeanor liability for a person who knowingly provides access to personal information about children to registered sex offenders when the person providing the information knows the other person is a registered sex offender. Specifically, this law:

- Provides misdemeanor liability for any list broker who continues to disclose personal information about a child within 20 days after that child's parent has requested in writing that disclosure be stopped.

- Requires persons who market or sell products or services directed to children to maintain a list of persons who have made written requests to discontinue sending items to an individual or child, requires such actions to cease upon written request, and provides misdemeanor liability for failure to comply with these requirements.

- Provides that it is a misdemeanor for any person to knowingly distribute or receive any personal information about a child with knowledge that the information would be used to abuse or physically harm the child.

- Does not affect the sale of lists to any governmental agency, the National Center for Missing and Exploited Children, non-profit institutions, as defined, or certain defined educational institutions.

## Crime Victims: Restitution

Under current law, a child cannot obtain Victim's Restitution Fund restitution in parental abduction or domestic violence cases.

***AB 1803 (Lempert), Chapter 700,*** allows children deprived of the lawful custody of their parents or guardians and children who witnessed domestic violence to obtain restitution from the Victim's Restitution Fund.

This new law contains language to avoid chaptering out AB 535 (Brown), Chapter 697; and AB 645 (Escutia), Chapter 895.

## Local Juvenile Delinquency Program

Although California's overall crime rate has declined significantly, California's juvenile crime rate remains a significant problem.

Preventative and punitive measures should be taken. Due to social and economic differences, California communities should have the authority to implement programs reflecting individual problems and needs.

The Challenge Grant Program combined these approaches in 1996. Utilizing state funding provided by the Challenge Grant Program, counties are free to implement programs (ranging from preventative to punitive) having the greatest potential of reducing crime. Awarded on a merit-grant basis, 1996 funding for the Challenge Grant Program assisted counties in implementing demonstration projects. Unfortunately, only 12 of the 42 counties submitting plans were awarded grants due to a lack of funding.

By providing additional funding for the Challenge Grant Program, more counties may be funded.

> ***AB 2261 (Aguiar), Chapter 325,*** revises the Juvenile Crime Enforcement and Accountability Challenge Grant Program. This new law requires the program to award grants on a competitive basis following request-for-proposal evaluation standards and guidelines developed by the Board of Corrections (BOC).
>
> This law makes some changes regarding the composition and strategies of coordinating councils under the program. This law also states the Legislature's intent that the program be funded at a minimum of $25 million annually through the 2001-02 fiscal year.

## Foster Parent and Caregiver Adoptions

The adoption process for relatives and long-term foster parents should be expedited.

> ***AB 2286 (Scott), Chapter 983,*** changes adoption procedures for a relative caregiver and foster parent with whom a child has lived for a minimum of six months. Specifically, this new law:
>
> - Adds legislative findings and declarations to name this law after Sara Berman, former Adoptions Division Chief for Los Angeles County, and to commend her work on behalf of children.
>
> - Decreases the time frame for which a foster child must have lived with his or her foster parents from one year to six months and specifies that the home study cannot be initiated until the child has resided in the home for at least six months.

- Requires relative caregivers to have had an ongoing and significant relationship with the child in order to receive consideration for expedited adoption proceedings.

- Grants discretion to DSS, adoption agencies and the courts in determining the requirements of the home study.

- Requires relative caregivers or foster parents to provide verification of employment records or income or both.

- Requires the relative caregiver's or foster parent's medical report be included in the assessment of the person as an adoptive parent and further requires the assessment to include certification that the applicant and each adult residing in the home has received a test for communicable tuberculosis.

- Adds the importance of sibling and half-sibling relationships to the list of issues on which prospective adoptive parents must receive information.

- Deletes the requirement that the home study determine that the home is free of health and safety violations.

- Makes technical and clarifying changes.

**Runaway Youth and Families in Crisis Project**

Runaways, status offenders and at-risk youth who have not entered the juvenile justice system should be prevented from engaging in delinquent and/or criminal behavior. While not all runaways enter the juvenile justice system, a high percentage of youth in the system have histories of committing status offenses that include running away.

***AB 2495 (Prenter), Chapter 1065,*** creates the Runaway Youth and Families in Crisis Project by establishing pilot projects involving private, non-profit organizations in the San Joaquin Central Valley, in northern California, and in southern California for a period of not less than three years. This new law provides for the project funding an amount appropriated in the annual Budget Act. Specifically, this new law:

- Establishes three-year pilot projects in one or more counties in the San Joaquin Central Valley, in one or more counties in northern California, and in one or more counties in southern California instead of creating projects in specified counties.

- Provides grants are awarded based on the proposal’s quality, based on the documented need for runaway youth services, and based on organizations in localities that receive a disproportionate low share of existing federal and state support for youth shelter programs.

- Authorizes peace officers, as defined, to transport a runaway youth or youth in crisis to the nearest runaway shelter provided the youth agrees to the transportation.

- Requires projects to notify parents that their children are staying at project sites consistent with state and federal parent notification requirements.

- Requires private, nonprofit organizations to annually contribute a local match, in-kind contribution to the project during the term of the grant award agreement.

- Requires project funding must be provided to the extent funds are made available in the annual Budget Act and up to three percent of that amount must be transferred each year to OCJP.

- Provides that no applicant receives a grant in an amount that exceeds the total amount of funds appropriated in the annual Budget Act for this project, minus the three percent for OCJP, divided by the total number of counties participating in the project.

**Youth Authority Facilities: Major Capital Outlay Projects: Ward Labor**

Through the voluntary Ward Day Labor Program, the CYA is able to quickly address major health and public safety issues affecting its facilities. The CYA should be granted more flexibility in addressing such issues by allowing program participants to voluntarily participate in any major construction-related project.

***AB 2572 (Firestone), Chapter 871,*** expands the CYA's use of ward labor for major capital outlay projects that do not exceed the project limit established in the Public Contract Code.

**Repeat Offender Prevention Project**

Additional counties could be significantly assisted by the Orange County Probation Department's program, "the 8 percent solution". This program represents one of the most significant ways public agencies can significantly reduce the social and public costs of juvenile crime. The program is being reviewed by public agencies across the country and featured on "60 Minutes".

***AB 2594 (Wright), Chapter 327,*** revises and recasts Repeat Offender Prevention Project provisions, including specifying which counties the project applies and revising the selection criteria for the participation of minors. Specifically, this new law:

- Provides that funding for the project is contingent on an unspecified appropriation in the 1998 Budget Act.

- Adds the Counties of Fresno, Humboldt, Los Angeles, Orange, San Diego, San Mateo, and Solano and the City and County of San Francisco to the existing project, unless the board of supervisors of one or more of these counties adopts a resolution to not participate in the project.

- Provides a minor must be 15 1/2 years of age or younger to be eligible.

- Provides funds be divided evenly among the participating counties.

**Corrections: Detainees: Prohibited Employment**

Like other states, California has a prison-work program that allows inmates to perform useful work. However, some contracts with private businesses allow inmates to have access to private and confidential customer information.

Recently, the national media have reported stories regarding prisoners who were given access to personal information through prison work programs. One Texas prison program allowed felons to enter the names and addresses of people who had filled out consumer surveys into computers and a convicted rapist began sending a woman intimidating letters about her personal responses. In California, a Ventura inmate was allowed to make airline reservations as part of a prison-work program and used a customer's credit card number fraudulently to charge $9,000 worth of merchandise.

***AB 2649 (Figueroa), Chapter 551,*** precludes specified types of inmates from working in situations that provide them with access to personal information and requires other inmates who have access to personal information to disclose that they are confined before taking any personal information from any individual. Specifically, this new law:

- Provides none of this law's provisions apply to inmates or wards in employment programs or public service facilities where incidental contact with personal information may occur.

- Provides a juvenile only has to disclose he or she is a ward when asked.

- Provides any program involving the taking of personal information over the telephone by a juvenile ward is subject to random monitoring of his or her telephone calls and such programs must provide supervision at all times.

**Gangs: Schools: San Fernando**

On February 6, 1997, the Centers for Disease Control and Prevention issued a report confirming that the United States has the highest rate of childhood homicide, suicide

and firearms-related deaths of any of the world's wealthiest nations. Nearly 75 percent of child murders in the industrialized world occur in the United States. In California, gangs and juvenile crime remain a significant problem.

In 1992, there were 52 gang-related homicides in the San Fernando Valley. The Communities in Schools of San Fernando Valley (CISSFV) program appeared to make a difference. The CISSFV program and its staff were key in establishing a gang peace treaty. In the first five months of the truce, there was a 70-percent drop in gang-related homicides. In 1996, there were only 18 gang-related murders in the Valley – one-half the number of the previous year.

The CISSFV program should be studied and a model developed.

> ***AB 2650 (Cardenas), Chapter 484,*** requests a study on the CISSFV program's impact on gang violence and makes legislative findings regarding the program. $100,000 has been appropriated from the General Fund to California State University to conduct the study.

**Corrections: Juvenile Correctional and Youth Center Facilities**

Dilapidated county juvenile facilities need to be renovated, reconstructed, constructed, and replaced.

> ***AB 2796 (Assembly Budget Committee), Chapter 499,*** provides $100 million from the General Fund for the renovation, reconstruction, construction, completion of construction, and replacement of county juvenile facilities. This law requires the funds to be administered by the BOC, which funds county proposals by competitive grants. This new law authorizes the BOC to receive recommendations from an advisory committee appointed by the BOC. AB 2796 requires a county to match at least 25 percent of resources, with not less than 10 percent of those resources in cash. This new law provides $25 million in grants for local youth centers, as administered by the Department of the Youth Authority.

**Minors: Informants**

A minor should not be coerced into being an informant.

> ***AB 2816 (Baugh), Chapter 833,*** provides no peace officer or agent of a peace officer can use a person under the age of 13 years as a minor informant, nor can such a person use a minor 13 through 17 years old as a minor informant without a court order made after certain conditions are met. This new law allows the use of minor informants 13 through 17 years old to be used in connection with the Stop Tobacco Access to Kids Enforcement Act (Stop Act).

This law requires the court to find probable cause that a minor committed an alleged offense before a minor can be used as a minor informant.

This law sets forth specific factors the court must consider before consenting to the use of a minor informant, including the maturity of a minor, the gravity of a minor's alleged offense, the safety of the public, the interests of justice, and whether the agreement is being entered into knowingly and voluntarily.

Finally, this law requires the court to advise a minor of the mandatory minimum and maximum sentence for the alleged offense, and to disclose the benefit a minor may obtain by cooperating with a peace officer or agent, before the minor can be used as an informant.

This law was an urgency measure and became effective September 25, 1998.

## Arizona Boys Ranch

The Arizona Boys Ranch had been one of several out-of-state juvenile placement facilities utilized by California counties for probation and juvenile court referrals. Since 1949, the Arizona Boys Ranch is an out-of-home residential care facility for males ages of 8 to 18 and employs a therapeutic treatment model program, “Milieu Therapy” or a total environment therapeutic approach. On March 2, 1998, California placed 317 children at the Arizona Boys Ranch, at an average cost of $3,846 per youth, per month and a total annualized cost of approximately $14.6 million (approximately $7.3 million in federal money, $4.4 million in county money, and $2.9 million in state money).

On March 2, 1998, Nicholaus Contreraz, a sixteen-year-old youth placed at the Arizona Boys Ranch by Sacramento Juvenile Court, died under the Arizona Boys Ranch’s care and supervision. On March 5, 1998, the Department of Social Services (DSS) issued a moratorium on new Arizona Boys Ranch placements. As required, DSS conducted an investigation, completed on July 1, 1998. Following the investigation, DSS made a determination to not provide state or federal Title IV-E support for any Arizona Boys Ranch placement after August 1, 1998. As of August 18, 1998, 58 California youths remain at the Arizona Boys Ranch, supported totally by county funds.

***ACR 185 (Washington), Chapter 176,*** requests DSS to work with counties to use funds, to the extent appropriate, otherwise used for the support of wards at the Arizona Boys Ranch for other specified purposes. This resolution states that DSS acted quickly and appropriately when withdrawing funding and suspending the interstate compact with the Arizona Boys Ranch based on California Investigative Team (CIT) recommendations. (The CIT was formed by DSS to review the circumstances leading to the death of Nicholaus Contreraz. A majority of the team recommended that a moratorium be imposed against new ranch placements and that California's young men be immediately removed. A minority of the team concurred with the moratorium, but further recommended that residents be permitted to complete their program.)

## Minors: Protective Orders

Juvenile court judges need a clear directive that minors violating restraining orders are within the juvenile court's jurisdiction and may be declared wards of the court. In one particular case, two young girls were allegedly followed, threatened with death, and harassed by an 11-year-old classmate. The superior court refused to allow one girl's mother to petition for a civil harassment order, contending that current law does not allow the enforcement of such an order against minors.

***SB 326 (Leslie), Chapter 706,*** codifies an existing rule of court by:

- Requiring courts to allow minors over age 12 to appear in court without a guardian and without counsel for the purpose of requesting or opposing a protective or restraining order.

- Authorizing minors under age 12 to appear in court without counsel, but with a guardian, for the same purpose.

This new law was an urgency measure and became effective on September 22, 1998.

## Foster Care

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Significant changes in California's foster care system need to be made.

***SB 933 (Thompson), Chapter 311,*** makes significant changes to the California foster care system, pursuant to provisions of the 1998-99 Budget Bill. Specifically, this new law:

- Requires that local educational agencies share information with county placing agencies on educational placements available to students residing in licensed children's institutions.

- Requires the Department of Education to involve local educational agencies in certification reviews and complaint investigations, and requires that local educational agencies include proposed oversight methods in their Special Education Local Plan Area plans and master contracts.

- Places into the Education Code the Education Passport requirements of Welfare and Institutions Code Section 16010.

- Extends notification requirements made by placing agencies to local educational agencies for non-special education students.

- Requests Judicial Council to adopt policies facilitating timely educational placement and transfer of educational background information.

- Prohibits assumption of educational authority as a condition of placement in a licensed children's institution or non-public school.

- Requires that placing agencies be invited to participate in local educational agencies' monitoring of non-public schools.

- States that it is declaratory of existing law to indicate DSS is the single state agency designated to act as Administrator for the Federal Interstate Compact on the Placement of Children in foster care.

- Requires all out-of-state group homes that can accept children from California to become certified by the DSS indicating that the out-of-state group homes meet the same standards as California facilities. This law allows the DSS one year to complete certifications. This law prohibits placement of foster children in facilities not certified. This law requires the out-of-state facility to provide serious events reports to the DSS and requires the DSS to forward that information to the placing agency within five days. This law allows the DDS to waive specific licensing standards in the same manner for out-of-state and in-state facilities.

- Requires, within six months of the operative date of this law, that counties obtain a multidisciplinary team assessment and placement recommendation for all children in out-of-state group homes.

- Authorizes the Compact administrator to suspend new placements to an out-of-state group home facility for up to 100 days pending any investigation of threats to the health or safety of children at the facility.

- Authorizes a new group home to operate with a provisional license for the first 12 months of operation. This law requires the DSS to notify a city or county planning agency of the provisional license and provide information to the city or county on how complaints or comments on the operation of the group home can be filed.

- Requires the DSS to produce a booklet on the roles and responsibilities of members of group home boards of directors, including information on financial responsibilities, legal requirements for meetings, and laws and regulations regarding group home operations.

- Requires that all financial documents submitted by group home facilities be signed and dated by the person responsible for ensuring the accuracy of the

- information contained in the record and must contain an affirmative statement that the submission of false or misleading information may be prosecuted as a crime.

- States the Legislature's intent that a group home board of directors includes neighbors and current or former clients of the facility.

- Excludes any person not eligible for licensure from serving as an officer, director, employee or member of the board of directors.

- Requires all employees with direct contact with clients in all community care facilities to be fingerprinted prior to employment. Criminal and background checks will be expedited. When the Livescan fingerimaging system is fully operational at the Department of Justice (DOJ), no individual can be employed in a facility until a clearance has been received. Currently, only individuals who admit to having lived outside of California are required to submit fingerprints to the Federal Bureau of Investigation. This law extends the FBI background check to all applicants. The DOJ is authorized to charge a fee sufficient to cover the expense of the expedited clearances.

- Establishes a fine of $100 per violation for facilities that fail to obtain the appropriate fingerprint and criminal background clearances for designated personnel.

- Authorizes the DSS to create a registry of individuals with current clearances that may be used by facilities rather than resubmitting new clearance information.

- Defines "facility manager", and requires a facility manager to be present at all times when children are present.

- Prohibits the DSS placement agencies from accepting any gifts or remuneration from group homes using the same standards as the Fair Political Practices Act.

- Requires group home administrators to become licensed or certificated, and establishes training and experience requirements. This law allows the DSS to charge a $100 fee for certification and establishes a special fund for these moneys. Certificates must be renewed every two years. Administrator's certificates can be suspended or revoked for violations of regulations or statutes; conduct inimical to the health, morals welfare or safety of children in the facility; conviction of certain crimes; knowingly allowing a child at the facility to use drugs or alcohol; and fraud, financial malfeasance or embezzlement. This law provides that an administrator whose license has been revoked is excluded from working in any other facility for a period of at least two years.

- Requires the DSS to establish standardized training and continuing education curriculum for group home facility managers and child-care providers.

- Requires each group home to update its plan of operation to indicate how many hours the administrator spends completing his or her duties and how those duties are accomplished, including the use of support personnel. This law allows the DSS to subject a facility's plan of operation for peer review. The facility is required to create and maintain a daily schedule of activities for children at the facility.

- Provides that the DSS may interview children who reside in a group home in places other than the group home, including schools, juvenile halls, recreation or vocational programs. The DSS must respect the rights of the child during any interviews.

- Requires group homes to maintain copies of all licensing actions taken by the DSS at the facility, and requires that this information be available for inspection by placing agencies, clients and their families.

- Requires group homes to provide copies of all licensing actions to the board of directors.

- Allows the DSS to collect any civil penalties against a group home by offsetting future payments.

- Requires the DSS to train the DSS staff involved in community care oversight at least 60 hours per year.

- Increases the DSS's access to records in matters where the DSS is participating in criminal, civil or juvenile proceedings.

- Requires that all children receive mental health screenings and assessments in counties which receive full systems of care funding to the extent funding is available. The Department of Mental Health (DMH) is required to report to the Legislature by April 1, 1999 with an estimate of the resources needed to provide mental health services to all eligible children in foster care.

- Requires the DMH, in consultation with the DSS, Judicial Council, counties and others, to develop a procedure for review of treatment plans for children receiving prescribed psychoactive medications.

- Provides for a provisional rate for group homes for up to the first 18 months of operations.

- Provides a six-percent rate increase to group homes and foster family agencies.

- Requires all group homes to submit annual audits to the DSS. This law provides a sliding scale, financial assistance program to assist small facilities in conducting audits.

- Creates an Office of the Foster Care Ombudsman at the DSS. The office provides information to children in foster care, receives complaints, and refers complaints for investigation or directly investigates complaints. The office must set up a toll-free number for children in foster care.

- Requires monthly visits of all foster children in group homes, and reimburses counties for the cost of this new mandate.

- Replaces the current level of care assessment and requires the DSS to implement the current best practice guidelines for the assessment of child and the child's family unit. The guidelines must also include methods for identifying appropriate placement options and monitoring the services provided to best address the strengths and needs of the child. This law requires the DSS to conduct a pilot project to test the use of an assessment protocol. Before May 1, 2001, the DSS must report to the Legislature on the status of the pilot with recommendations on statewide implementation and incorporation into the Child Welfare Services/Case Management System.

- Creates the Children's Services Development Program, which allows counties to enter into performance agreements with specific providers to develop services not available in the community.

- Authorizes, upon request of a county, the DSS director to waive regulations regarding foster care payments or the operation of group homes for specific agreements pursuant to this program which promises to produce a worthwhile test of an innovative approach. Counties must agree to monitor the agreement through performance measures. No regulations regarding the health or safety of children may be waived.

- Requires the DSS to convene a working group to develop a protocol outlining the roles and responsibilities of placing agencies and group homes regarding emergency and non-emergency placement of foster children in group homes.

- Requires the DSS to convene a Law Enforcement Task Force to identify the statutory and regulatory changes to permit efficient and effective criminal prosecution of illegal activities of individuals associated with group homes. The Task Force consists of the DSS, the DOJ, law enforcement officers, probation and welfare workers, district attorneys, providers, public defenders, and current or former foster care youth.

- Requires the DSS, under the direction of the Health and Welfare Agency and in consultation with all stakeholders, to re-examine the role of out-of-home placements for children within the child welfare system. This re-examination must focus on the role of group care within a family-based system of care, including group homes, foster family agencies, or foster family homes. Once the roles of each out-of-home placement element are defined, the DSS makes policy recommendations regarding the needs of children to be served, program design and standards, licensing categories, rates and rate setting procedures, performance agreements, outcomes, outcome indicators and performance measures, mechanisms to ensure continuous quality improvement, and related oversight.

This law was an urgency statute and became effective on August 19, 1998.

NOTE: AB 1656 (Ducheny), Chapter 324, the 1998 Budget Bill, included the following provisions:

- $11.5 million for the DSS for various state support activities;
- $11.4 million to expand the Independent Living Program;
- $8.9 million to expand day treatment services;
- $4.5 million to subsidize financial audits of small group homes;
- $1.3 million for fingerprint checks;
- $1.9 million to expand local professional staff training;
- $25.8 million for monthly visits of children residing in group homes;
- $219,000 for the Ombudsperson program; and,
- $50 million to provide a six-percent rate increase for group homes and foster family agencies.

**Juvenile Law**

Recently, the California Supreme Court ruled that juvenile adjudications may be used as prior convictions within the meaning of the “Three Strikes” law and this decision has given viability to the use of such adjudications.

Procedures for utilizing juvenile records in “Three Strikes” cases need to be clarified, and the destruction of juvenile records relating to any juvenile 16 years of age or older who committed a specified serious offense should be prohibited.

District attorneys should be allowed to inspect, copy, and introduce juvenile records in court for the purposes of proving any alleged enhancement under the “Three Strikes” law.

***SB 1387 (Karnette), Chapter 374,*** prohibits the destruction of juvenile records relating to the commission of certain specified offenses and provides for inspecting, copying, and introducing these records into evidence. Specifically, this new law:

- Prohibits the destruction of records of a juvenile 16 years of age or older at the time he or she committed a specified serious felony offense.

- Provides that when a prior conviction is alleged for the purposes of the "Three Strikes" law, notwithstanding any other provision of law, the parties are entitled to inspect, copy, and introduce into evidence juvenile records of any person 16 years of age or older found to have committed a specified serious felony for the purposes of proving the alleged conviction.

- Requires that specified juvenile records are kept confidential and available for inspection and copying only by the court, jury, parties, counsel for the parties, and any other person authorized by the court.

- Provides that in the case of an acquittal or if an enhancement is stricken, the court orders the records resealed.

**Juvenile Facilities: Maximum Capacity**

Due to the CYA’s sliding-scale fees, counties are trying to place less serious offenders in more appropriate local settings.

***SB 1422 (Alpert), Chapter 375,*** authorizes specified juvenile facilities to exceed the population capacity of 125 children upon approval of the BOC.

**Adoption: Dependent Children**

Adoptions of dependent children should be expedited. At its regular six-month status hearing of each dependency case, the court’s ability to assess the progress being made toward adoption in cases where parental rights have been terminated should be enhanced.

Prior to 1997, the long-standing policy of the juvenile dependency system was family preservation whenever possible and parents were offered services designed to eliminate conditions leading to loss of custody and to facilitate reunifications of parents and children. However, in 1996, after reports of continued abuse and neglect of children returned to unsafe homes, this policy was reviewed and modified.

In 1996, the Legislature passed SB 1516 (Solis), Chapter 1084, Statutes of 1996, which states the dependency system's goals are to provide maximum safety and protection for children currently being physically, sexually, or emotionally abused, being neglected or exploited; and ensuring the safety, protection and physical and emotional well-being of at-risk children. Family preservation was the focus after the child's safety, protection, physical and emotional well-being was assured.

In light of these and other 1996 dependency system changes, reports indicate an increased number of children in need of permanent placement outside their homes. For example, Los Angeles County adoptions have risen from fewer than 300 in 1989 to more than 1,200 by 1997 and are expected to rise 3,000 in 1998. Consequently, the court has an enhanced need to monitor these cases and more closely oversee planning to expedite the permanent placement of these children.

> ***SB 1482 (Rosenthal), Chapter 355,*** requires the juvenile court to conduct the six-month review of a child for whom the court has ordered parental rights terminated and the child placed for adoption. This law also requires the local welfare department to provide the court with a detailed report on the child's status and to recommend any court orders expediting the permanent placement and adoption of that child.

**The California Gang, Crime, and Violence Prevention Partnership Program: Tattoo Removal Program**

AB 963 (Keeley), Chapter 883, Statutes of 1997, created the Gang, Crime, and Violence Prevention Partnership Program to provide grants to violence prevention groups working in state communities.

Community-based organizations should be allowed to use such grants for violence prevention work inside juvenile detention centers by providing continuous services for those entering the juvenile justice system.

Additionally, due significant interest shown in the tattoo removal program [SB 426 (Hayden), Chapter 907, Statutes of 1997], more tattoo removal lasers should be funded.

> ***SB 1700 (Hayden), Chapter 842,*** makes state and local juvenile detention facilities eligible for the California Gang Crime and Violence Prevention Partnership Program services and permits community-based organizations to use such grants for violence prevention work inside juvenile detention centers.
>
> This law also expands the tattoo removal program and funds four new tattoo removal lasers.

## After-School Programs

Current law allows school districts to provide before- and after-school, day-care programs for pupils in kindergarten through grade 9. Last year, AB 326 (Ortiz), Chapter 917, Statutes of 1997, encouraged the development of before- and after-school programs particularly aimed at improving student literacy. That law provided a funding mechanism and guidelines for the establishment of school-based, school-age, before- and after-school programs. The 1998-99 Budget Bill contains $3.5 million in base funding to continue this program.

***SB 1756 (Lockyer), Chapter 320,*** establishes, in combination with AB 2284 (Torlakson), Chapter 318, and AB 1756 (Ortiz), Chapter 317, the After School Learning and Safe Neighborhoods Partnerships Program for after-school partnerships at elementary, middle and junior high schools. The after-school programs offer a safe environment where students benefit from educational enrichment, tutoring, homework assistance, and recreational activities. Over 60,000 kindergarten through grade 9 students can be served. Specifically, this new law requires:

- Programs to operate at the school site for three hours per day and at least until 6:00 p.m. on all school days. Local programs have the option of operating during the summer and vacation periods for a minimum of three hours per day. All students attending the school are eligible to participate in the program.

- Program funding awarded on a competitive basis. Priority is given to schools where at least 50 percent of the elementary and 50 percent for middle and junior high school students are eligible for free or reduced-price meals.

- Programs to develop their plans in a collaborative process that includes other governmental agencies, including city and county parks and recreation departments and community organizations.

- Programs to receive renewable incentive grants of up to $5 per day, per child, with a minimum grant of $75,000 per year for elementary schools and $100,000 per year for middle and junior high schools. Fifty percent of the funds provided for this program are reserved for elementary schools and the balance is for middle and junior high schools.

- Programs to maintain a ratio of no more than 20 pupils to 1 staff. Staff must meet minimum qualifications, as specified.

- Programs to provide 50-percent cash or in-kind match from the local school district, governmental agencies, community organizations or local businesses

- for each dollar received in grant funds. The 1998-99 Budget includes an appropriation of $50 million from the Proposition 98 General Fund for this program.

**Juvenile Court Dependents and Wards: Orders**

A delinquency court authority should be able to issue restraining and protective orders, custody and visitation orders, and findings of paternity.

***SB 2017 (Schiff), Chapter 390,*** gives juvenile court the authority to issue custody, visitation, or restraining orders with respect to a child the subject of a juvenile delinquency (criminal conduct) proceeding. Specifically, this law:

- Adds stalking a child to the list of acts that may be enjoined.

- Authorizes the delinquency court to issue an order enjoining persons from attacking, threatening, or sexually assaulting the child.

- Authorizes the delinquency court to issue an order prohibiting the child from contacting, threatening, or disturbing the peace of any person the court found to be at risk from the child.

- Provides that if the child is a ward of the court and a proceeding is pending in the superior court for dissolution, nullity, legal separation, paternity, or custody, or if a custody order has already been entered, the juvenile court may make orders concerning custody or visitation or may establish paternity.

- Requires the juvenile court, after receiving recommendations about the status of a child who appears to come within the jurisdiction of both the dependency and delinquency courts, to provide notice of the recommendations to any other juvenile court having jurisdiction over the child.

- Requires Judicial Council to adopt appropriate rules and forms.

**Department of the Youth Authority: County Payment Rates**

SB 681 (Hurtt), Chapter 6, Statutes of 1996, imposed a county fee when a county sent "low-level" offenders to CYA. SB 681's intent was to discourage counties from sending low-level offenders to CYA and encourage counties to treat, punish and house these offenders at the local level.

Related county costs for CYA commitments has increased from just under $2 million in Fiscal Year 1995-96 to a projected $20 to 30 million for the Fiscal Year 1997-98. While costs have increased significantly, low-level CYA commitments have decreased approximately 53.2 percent.

Given that the per-capita costs CYA charges counties have continually increased (as counties send fewer offenders to CYA, their per-offender costs increased), these costs should be frozen at the January 1, 1997 level.

> ***SB 2055 (Costa), Chapter 632,*** caps the fees currently paid by counties to CYA for committing a youth to the CYA by defining the per-capita institutional cost is the lesser of the current per-capita institutional cost of CYA or the per-capita institutional cost charged the counties as of January 1, 1997.

**Juvenile Law: Principles: Victims' Rights**

The Juvenile Justice Task Force to Review Juvenile Crime and the Juvenile Justice Response recommended that California adopt a balanced approach framework. One of the three reform components recommended by the Task Force was to improve offender accountability.

According to the Federal Office of Juvenile Justice and Delinquency Prevention, restitution, community service and victim-offender mediation provide an offender with awareness of the consequences of his or her actions.

> ***SB 2074 (Schiff), Chapter 761,*** adds victim restitution, payment of a contribution to the Victim Restitution Fund and victim-offender conferencing to the list of possible sanctions that the court may choose to impose on a juvenile offender. Specifically, this new law:
>
> - Ensures victims must be told they have the right to be informed of the final disposition of juvenile cases.
>
> - Revises some juvenile delinquency law purposes and provisions to include the expansion of some victim-related punishment and a requirement that probation officers notify victims of their rights.
>
> - Revises the purpose of juvenile delinquency law to add that when the minor is no longer a ward of the juvenile court, the guidance he or she received should enable him or her to be a law-abiding and productive member of his or her family and the community.
>
> - Adds the importance of redressing injuries to victims to the considerations juvenile courts and other public agencies charged with enforcing, interpreting, and administering the juvenile court law must take into account.
>
> - Provides that in addition to existing punishment through the imposition of specified sanctions the juvenile court may, as appropriate, direct the offender to complete a victim impact class, participate in victim offender conferencing subject to the victim's consent, pay restitution to the victim or victims, and

make a contribution to the Victim Restitution Fund after all victim restitution orders and fines have been satisfied in order to hold the offender accountable or restore the victim or community.

- Requires the probation officer to inform the victim of a juvenile delinquency offense of any victim-offender conferencing program or victim impact class available in the county, and of his or her right to be informed of the final disposition of the case, including his or her right to victim restitution.

**Youthful Offenders**

A more specific policy should be established regarding CYA notification to parents of CYA wards who are seriously ill, seriously injured, or victims of violent crime.

***SB 2081 (Schiff), Chapter 496,*** ensures that parents of a confined child be notified if their child is seriously ill, seriously injured or is the victim of a serious offense, as specified. Specifically, this law:

- Provides whenever any minor under the CDC jurisdiction is need of medical, surgical, or dental care, the CDC may authorize, upon the recommendation of the attending physician or dentist, as applicable, the performance of that necessary medical, surgical or dental service.

- Provides the parents or guardians of any minor in the custody of the state or county, if they can reasonably be located, must be notified within 24 hours by the public officer responsible for the well-being of that minor of any serious injury or serious offense committed against the minor upon reasonable substantiation that a serious injury or offense occurred.

- Provides that the above notification provision does not apply if the minor requests that his or her parents or guardians not be informed and the chief probation officer or the CYA director, as appropriate, determines it would be in the best interest of the minor not to inform the parents or guardians.

- Defines "serious offense" and "serious injury" for purposes of this law.

**Juveniles: Detention**

AB 904 (Bowler), Chapter 304, Statutes of 1995, designated responsibility for inspecting local juvenile detention facilities to the BOC.

To implement this statute, the BOC conducted a comprehensive review of existing standards and statutes governing juvenile facilities. The BOC appointed an Executive Steering Committee and six task forces to conduct the review and over 106 juvenile offender experts from local California jurisdictions were on the task forces. Additionally, youth advocates also participated in each task force. In addition to recommending

standard revisions, the task forces considered existing Welfare and Institutions Code language. Task force recommendations were referred to the Executive Steering Committee and ultimately acted on by the BOC. These changes and recommendations should be adopted by the state.

***SB 2147 (Brulte), Chapter 694,*** changes the law concerning the regulation of juvenile detention facilities relating to minors in adult facilities, the suitability determinations for juvenile facilities, and the creation of a "homelike environment" in juvenile facilities. Specifically, this law provides that no part of a building or a complex that contains a jail may be converted or utilized as a secure juvenile facility unless all of the following criteria are met:

- The juvenile facility is physically separate and apart from the jail or lockup so there is no contact between juveniles and incarcerated adults;

- Sharing of non-residential program areas only occurs where there are written policies and procedures assuring there is time-phased use of those areas which prevent contact between juveniles and incarcerated adults;

- The juvenile facility has a dedicated and separate staff from the jail or lockup, including management, security, and direct care staff. Staff providing specialized services (such as food, laundry, maintenance, engineering, or medical services) not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, may serve both populations; and,

- The juvenile facility complies with all applicable state and local statutory, licensing, and regulatory requirements for juvenile facilities of its type.

This law also narrows the definition of "jail" with respect to juvenile facilities to "a locked facility" rather than "any building that contains a locked facility". Furthermore, this law outlines the procedures for a juvenile facility to take corrective action to resolve any noncompliance issues and for the BOC to determine the facility's suitability.

**Youthful Offenders: Continued Treatment**

The maximum age a juvenile can be kept in the juvenile justice system is 25 years old.

***SB 2187 (Schiff), Chapter 267,*** recasts, clarifies and revises current law concerning the civil commitment of CYA wards beyond the age of 25. Specifically, this law repeals a redundant hearing procedure to determine whether to proceed with a commitment hearing to determine if a minor must be held within the CYA past age 25.

# MURDER, DEATH PENALTY, AND CAPITAL PROCEDURES

## Human Remains: Disposition

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An individual charged with contributing to a family member's death should not control the disposition of that family member's remains.

In San Diego, in the past year, three cases have occurred where family members have been forced to ask the individual charged in connection with the decedent's death to grant the family members permission to make funeral arrangements. In one case, the decedent's family asked the attorney for the husband accused of murdering his estranged wife to release his right to control disposition. The husband's attorney did not grant the request until the prosecutor sought court intervention.

***SB 1360 (Alpert), Chapter 253,*** prohibits individuals charged with murder or voluntary manslaughter from controlling the disposition of the murdered decedent's remains and makes other changes. Specifically, this new law:

- Provides that any person charged with first- or second-degree murder or voluntary manslaughter in connection with the death of another person relinquishes his or her right to control the disposition of the decedent's remains, and the right of control falls to the next order of kindred.

- Provides that if the charges are dropped or the person is acquitted of the charge, then he or she regains the right to control disposition.

- Provides that an attorney-in-fact acting under a durable power of attorney for health care is vested with the first right to control the disposition within the order of succession, superseding the surviving spouse and all others in the order of succession.

- Clarifies that one-half or more of the surviving adult children are sufficient to make disposition decisions.

- Clarifies that payment for disposition arrangements can be made through other avenues, including insurance, trusts, commitments by others or any other effective and binding means.

- Repeals the responsibility of a cemetery authority to notify the public administrator that individuals with control over disposition cannot be found.

## Criminal Procedures: Indigent Defendants: Capital Cases

Confidentiality provisions exist until cases are final for indigent defendants charged with murder and receiving Penal Code Section 987.9 funding. As a result, habeas appeals

have been hampered by a lack of access to records that could resolve issues of ineffective assistance of counsel. The issue of confidentiality related to funds provided by the court for the payment of investigators and experts in capital cases should be clarified.

***SB 1441 (Kopp), Chapter 235,*** allows the Attorney General to access to confidential funding records in a capital case when the defendant raises an issue on appeal or collateral review relating to information contained in those records, and conforms provisions relating to jury trial on the issue of prior convictions. Specifically, this law:

- States that confidentiality provisions do not prevent any court from providing the Attorney General with access to protected documents when the defendant in a capital case raises an issue on appeal or collateral review and the records related to that issue.

- Provides that when a defendant raises that issue, the funding records are provided to the Attorney General upon request. In such a case, the documents remain under seal and their use limited solely to the pending proceeding.

- Provides that after a guilty plea is entered to a complaint and it is discovered that all prior convictions are not charged, that complaint may be amended, prior convictions charged, and the defendant is entitled to jury trial on the issue of whether he or she has suffered the prior conviction; but the issue of whether or not the defendant is the person who suffered the prior conviction is tried by the court without a jury.

**Murder: Special Circumstances**

As a result of court decisions, two separate problems with the law of special circumstances in capital murder cases need to be addressed.

**SB 1878 (Kopp), Chapter 629,** makes several changes to California's special circumstance statutes which allow the imposition of a sentence of life without parole or death where an individual is convicted of first-degree murder. Specifically, this law:

- Provides that to be sentenced under the arson special circumstance where the defendant intended to kill the victim, the prosecutor must only prove the elements of the specific felony alleged even if the felony was committed primarily or solely for the purpose of facilitating the murder.

- Provides that to be sentenced under the kidnapping special circumstance where the defendant intended to kill the victim, the prosecutor must only

prove the elements of the specific felony alleged even if the felony was committed primarily or solely for the purpose of facilitating the murder.

- Provides that the special circumstance for "lying in wait" is amended to provide that the defendant intentionally killed the victim "by means of" instead of "while" lying in wait.

- States it is the Legislature's intent regarding the first two paragraphs above to create a statutory exception to the "independent purpose doctrine" requirement set forth in People v. Weidert (1985) 39 Cal.3d 836 and People v. Green (1980) 27 Cal.3d 1, for the special circumstances of kidnapping and arson, when specific intent to kill is proven.

# PEACE OFFICERS

## Peace Officers: Warrantless Arrest

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Under current law, if an officer has reasonable cause to believe a person is carrying a loaded, concealed weapon, the officer can make a warrantless arrest even if the offense did not occur in the officer's presence. However, an officer cannot make such a warrantless arrest for an offense that did not occur in the officer's presence and the offender is carrying a concealed unloaded weapon. Officers need to be able to make such an arrest to ensure public safety.

For instance, when a person is found carrying an unloaded concealed weapon at an airport security screening station, the only way to place the suspect into custody is for the screener to make a citizen's arrest. A screener is not compelled to make a citizen's arrest and airline and security company policy is not to make a citizen's arrest. The only recourse is for the responding officer is to confiscate the weapon and allow the suspect to continue.

> ***AB 247 (Scott), Chapter 224,*** permits a peace officer to make a warrantless arrest for a misdemeanor firearm offense occurring at an airport where the offender carried a concealed firearm without a permit in an area to which access is controlled by the inspection of persons and property not in the officer's presence and the officer makes the arrest as soon as he or she has reasonable cause to believe the violation occurred.
>
> This new law requires the concealable firearm violation to occur within an area of the airport controlled by the inspection of persons and property before the officer can make a warrantless misdemeanor arrest.
>
> This new law contains chaptering language to avoid conflicts with AB 1767 (Havice), Chapter 699; and SB 1470 (Thompson), Chapter 182.

## Correctional Peace Officers Standards and Training

California's overcrowded prisons are becoming increasingly violent. Correctional officers need to perform their jobs safely and effectively and need increased training and higher standards.

Greater public oversight of Department of Corrections' (CDC) operations is needed. The Inspector General's role, the Correctional Agency's "watchdog", should be expanded to include more frequent and public audits.

> ***AB 271 (Villaraigosa), Chapter 762,*** increases standards and training for correctional peace officers, and requires that state internal affairs investigators also complete training and adhere to specified standards. Specifically, this law:

- Expands the Inspector General's oversight responsibility to ensure that the CDC and the California Youth Authority (CYA) internal affairs investigations are conducted credibly.

- Provides increased training and standards for the CDC and CYA internal affairs investigators, and requires that they submit to background checks.

- Provides for increased standards and training for the CDC, CYA, and Department of Mental Health peace officers.

- Requires that prospective applicants be free of emotional or mental conditions adversely affecting the exercise of his or her duties as a peace officer.

- Requires correctional peace officer apprentices to serve a period of probation for 1,800 hours or 12 months, whichever is longer; and requires that a cadet complete an approved course of training prior to being assigned as a correctional peace officer.

- Authorizes the Commission on Peace Officers Standards and Training (POST) to establish a course in carrying and using firearms for correctional peace officer apprentices.

**Mental Health: Disclosure of Records: Law Enforcement**

During criminal investigations, law enforcement officers encounter psychiatric hospital staffs who refuse to release information about a patient without a court order. The inability to obtain the necessary information often lengthens an investigation and may result in potential suspects avoiding arrest. Currently, an offender can use a psychiatric hospital, or move from hospital to hospital, to elude police and jeopardize public safety.

***AB 302 (Runner), Chapter 148,*** allows for the release of information as to whether or not a person is a patient in a mental health facility when a law enforcement officer lodges with the facility a warrant of arrest or an abstract of such a warrant showing that the person named in the warrant is wanted for the commission of a serious or violent felony.

Information that can be requested and released is limited to whether or not the person named in the arrest warrant is presently confined in the facility. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the law enforcement officer may not enter without first obtaining a valid search warrant or permission of the facility staff. This law requires that this procedure be implemented with minimum disruption to health facility operations and patients.

## Testimony: Closed-Circuit Television

Placer County is approximately 153 miles in length, covering a region from Lake Tahoe to Roseville. There are multiple law enforcement agencies issuing citations and multiple court locations. Peace officers spend a great deal of time travelling to and from court appearances and are sometimes required to wait hours for five-minute court appearances. In addition, transporting defendants from location to location presents public safety risks.

***AB 635 (Oller), Chapter 356,*** provides for a pilot project for a peace officer's or defendant's closed-circuit television testimony under specified circumstances for infractions and misdemeanors, and allows an in-custody defendant to be arraigned via closed-circuit television for an infraction. Specifically, this new law:

- Limits the use of closed-circuit testimony otherwise allowed by this law to a Placer County pilot program.

- Requires that in infraction and misdemeanor trials, a defendant must consent to allow a peace officer to testify via closed-circuit television and the prosecution must consent to a defendant's request to so testify.

- Requires the presiding judge of Placer County to submit a report to Judicial Council and the Legislature on or before January 1, 2001.

- Sunsets on January 1, 2002.

## Financial Records: Crimes

California financial investigators and prosecutors need to be provided with the necessary tools to effectively investigate and prosecute financial crimes.

***AB 976 (Papan), Chapter 757,*** allows specified peace officers to testify about hearsay before a grand jury, and changes the procedures for obtaining and disclosing specified utility, escrow, title and financial documents. This new law:

- Modifies the procedures under which a state or local agency may obtain financial records, and generally requires 10-days' advance notice so the customer can be notified or attempted to be notified prior to the records being received.

- Excepts from confidentiality provisions of the California Right Financial Privacy Act, the dissemination of financial information and records pursuant to a court order upon written ex parte application by a peace officer, under specified conditions relating to certain felony financial crimes; provides for eventual notice to the customer; provides for eventual public disclosure of the

ex-parte application and any subsequent judicial order; and provides for immunity for the financial institution complying with an court order.

- Provides utility, escrow, or title record holders may voluntarily disclose or provide information to law enforcement upon request, expands the definition of "utility records," and requires law enforcement to eventually notify a customer when a court has ordered disclosure of the customer's records without initial notice to such a customer.

- Provides utility records, escrow records or title records must only be issued upon an ex-parte peace officer application showing reasonable cause to believe the information is relevant to an ongoing investigation of a felony financial crimes investigation, under specified conditions.

- Removes the presumption, with regard to court-ordered withholding of disclosure of the subpoenaing customer's financial records, that prompt notification is the rule and delayed notification the exception.

- Adds language to avoid chaptering out AB 2452 (Leach), Chapter 771, and makes other technical and conforming changes.

**Peace Officers: Personnel Files**

A complaint should not stay in a peace officer's personnel file if the complaint is proven false.

***AB 1016 (Hertzberg), Chapter 25,*** requires the removal of unfounded and exonerated complaints from a peace officer's general personnel file prior to any official determination regarding promotion, transfer, or disciplinary action by the officer's employing department or agency. This law provides a complaint is exonerated when the investigation clearly established that the actions of the peace officer did not violate the law or department policy. This law allows management to access those complaints in a separate file and to use such complaints to require counseling or additional training as long as management does not use the complaints for punitive or promotional purposes. Finally, this law permits management to use the information in the separate file in connection with a properly re-opened investigation where significant evidence has been discovered likely to affect the investigation's outcome and that could not reasonably discovered previously in the investigation.

**Domestic Violence**

Under current law, law enforcement must refer victims of rape and other sexual assault crimes to counseling centers. Victims should have access to counseling services before an abusive relationship leads to rape or other violent crimes.

***AB 1201 (Murray), Chapter 698,*** expands the group of victims entitled to receive domestic violence cards to include victims of dating relationship battery or corporal injury on a spouse. Specified information is required on the card. Specifically, this law:

- Requires existing local law enforcement policy to include the California Victims' Compensation Program and a contact number for the program on the written notice provided to victims at crime scenes.

- Adds language to avoid chaptering out AB 1115 (Knox), Chapter 456; AB 2172 (Sweeney), Chapter 701; and AB 2177 (Kuehl), Chapter 702.

## Peace Officers

Any person who is a sheriff or chief of police in any California county or city should have the same basic training as all of his or her subordinates. Without such training, a police chief cannot make an arrest and must obtain a permit to carry a firearm.

Government Code Section 24004.3 mandates that before a person is eligible to run for the office of county sheriff, he or she must have at least one year of experience within Penal Code Section 830 or 830.2 provisions. A candidate has to have at least a basic POST certificate to satisfy this requirement.

Currently, only sheriffs are required to have POST training.

***AB 1211 (Committee on Public Safety), Chapter 66,*** provides that each police chief or person in charge of a law enforcement agency appointed on or after January 1, 1999 must complete training mandated by POST within two years of the appointment, as a condition of continued employment.

Provisions of this law are incorporated into SB 1627 (Hughes), Chapter 746.

## Arson

Current law requires convicted arsonists to register with local police agencies; however, in many instances, this information is never communicated to fire agencies (the investigative body in arson cases).

***AB 1844 (Thompson), Chapter 359,*** requires law enforcement to make arson registration information available to local fire officials.

## Government Tort Liability: Peace Officers

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Surviving spouses should be protected from being named in frivolous lawsuits.

***AB 1865 (Wildman), Chapter 559,*** provides that if a peace officer is slain while in the line of duty, neither the widow or widower, nor the heirs of the peace officer, are liable for any injury or death resulting from an act or omission of a peace officer occurring in his or her line of duty. This immunity applies whether or not the act or omission is related to the officer's death. Specifically, this law:

- Provides that nothing in this law precludes any action from being brought against the estate of the peace officer.

- Makes a technical correction providing immunity from liability for death, as well as injury, resulting from an act or omission of a peace officer.

**Crimes Against Public Officials**

Jurors, peace officers, prosecutors, judges and other public officials face ever-increasing personal attacks in retaliation for carrying out their official duties. In addition, criminals are now targeting families as well.

***AB 2154 (Pacheco), Chapter 748,*** adds peace officers, non-elected public defenders, prosecutors and their families to statute, with severe penalties for assault or attempted murder on elected public officials. This law provides an attempted murder on a peace officer, public defender and prosecutor is punishable by 15-years-to-life and provides that an assault on a peace officer, public defender or prosecutor is an alternate felony/misdemeanor. Specifically, this new law:

- Expands the list of public officials under applicable alternate felony/misdemeanor penalties relating to the assault on a public official in retaliation for, or to prevent the performance of, the victim's official duties.

- Expands the list of public officials relating to the attempted murder in retaliation for, or to prevent, the performance of official duties, punishable by a term of 15-years-to-life and such person is not eligible for parole for a minimum of 15 years.

- Adds to the "public officials" list: (1) a former judge of any local, state or federal court of record; (2) any prosecutor or assistant prosecutor of any local, state or federal prosecutor's office; (3) a former prosecutor or assistant prosecutor of any local, state, or federal prosecutor's office; (4) an assistant public defender of any local, state, or federal public defender's office; (5) a former public defender or assistant public defender of any local, state, or federal public defender's office; (6) any peace officer; and, (7) any juror in any local, state or federal court of record, or the immediate family of any of these officials.

- Defines "immediate family" and "peace officer".

## Domestic Violence: Officer Response

A victim must be able to safely escape his or her batterer. A victim should be able to request law enforcement to provide safe passage out of the victim's house. Responding officers on domestic violence calls should arrange for victim transportation to a hospital if the victim is in need of treatment.

Additionally, peace officers must be trained to recognize the signs of domestic violence.

***AB 2172 (Sweeney), Chapter 701,*** adds to the list of responses required to be included in local enforcement policy on domestic violence. Specifically, this new law:

- Adds to the list of responses required to be included in local law enforcement policies on domestic violence emergency assistance to children.

- Adds language to prevent chaptering out AB 1201 (Murray), Chapter 698; and AB 2177 (Kuehl), Chapter 702.

## Department of the California Highway Patrol: Out-of-State Funerals

California Highway Patrol (CHP) officers should be able to attend out-of-state law enforcement officer funerals.

***AB 2236 (Morrissey), Chapter 220,*** authorizes the CHP commissioner to approve out-of-state travel for CHP members to attend out-of-state funerals related to law enforcement officers. Specifically, this new law:

- Authorizes the CHP commissioner to approve the out-of-state travel within the United States for CHP members, in numbers the commissioner deems appropriate, to attend out-of-state law enforcement officer funerals or to attend out-of-state events related to funerals of law enforcement officers, including the National Peace Officers Memorial.

- Specifies that reimbursement for actual and necessary travel expenses for CHP members is allowed for these purposes up to a maximum aggregate amount of $40,000 in any fiscal year.

## Public Safety Officers

The Peace Officers Procedural Bill of Rights Act, enacted in 1976, should be updated. Specifically, the definition of "lie detector" must be modified to include such new electronic devices as "voice stress analyzers".

***AB 2293 (Scott), Chapter 112,*** provides that for the purposes of the Peace Officers Procedural Bill of Rights Act a "lie detector" is defined to include the latest electronic deception devices. Specifically, this law defines "lie detector" as a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device, whether mechanical or electrical, that is used, or the results are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

## Computer Crime

When living in an age increasingly dominated by computers, it is important for law enforcement to be adequately trained in high technology crimes. Law enforcement training in high technology crimes and a feasibility study for a state-operated, computer forensics center are needed.

If a patrol officer is inadequately trained, a high-tech crime may go unrecognized or unsolved. If a computer examination is not conducted properly, valuable evidence may be lost and valuable property damaged.

New technologies are greatly affecting the manner in which traditional crimes are being carried out. Stalkers are now using computers, faxes, and other means to invade the privacy and the rights of their victims.

***AB 2351 (Hertzberg), Chapter 826,*** expands current stalking and telephone harassment laws to include contacts made through electronic communication devices such as computers. This new law requires police officers to receive training in high technology crimes and requires the Office of Criminal Justice Planning (OCJP) to conduct a feasibility study with respect to a state-operated center on computer forensics. Specifically, this new law:

- Adopts the definition of "electronic communication device" (ECD) found in current federal law.
- Clarifies that the ECD definition applies to the credible threat and other provisions included in this law.
- Provides that an offense committed by means of an ECD medium, including the Internet, may be deemed to have been committed where the electronic communication was originally sent or was first viewed by the recipient.
- Clarifies that telephone calls or electronic contacts made in good faith are not punishable.
- Amends the police officer training provision so that high technology crime training is mandated only for police officers or sheriffs at a supervisory level,

and offered to all officers and sheriffs as part of continuing professional training.

- Appropriates $230,000 from the General Fund to OCJP for the purpose of performing the feasibility study.

**Financial Privacy**

Currently, the right to financial privacy permits law enforcement to obtain specified customer account information from a financial institution upon certification that a "crime report" has been filed involving check fraud. The information the institution is required to disclose includes account activity for the period 30 days before and 30 days after the date of the alleged fraudulent activity, account balances, number of items dishonored, the dollar volume of dishonored items, and the dates and amounts of deposits and debits.

Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L.104-193, made amendments to Social Security Sections 454 and 466, requiring states to either establish new or modify existing procedures, as specified. As a result of PRWORA, the Department of Social Services (DSS) indicates the state must develop a method to honor another state's subpoena power for child support enforcement-related information. If federal law is not complied with, DSS indicates $4 billion in federal Title IV-A TANF Program is at risk.

Currently, an administrative subpoena from another state received by a California bank or financial institution is not recognized and information is not released.

It should be noted that California Code of Civil Procedure Section 2029 states, "Whenever any mandate, writ, letters rogatory, letter of request, or commission is issued out of any court of record in any other state, territory, or district of the United States, or in a foreign nation, or whenever, on notice or agreement, it is required to take the oral or written deposition of a natural person in California, the deponent may be compelled to appear and testify, and to produce documents and things, in the same manner, and by the same process as may be employed for the purpose of taking testimony in actions pending in California."

The aforementioned code section demonstrates that California has a mechanism in place for other states to obtain information and California subpoenas. However, Social Security Act Section 666 specifies statutorily prescribed procedures to improve the effectiveness of child enforcement and outlines expedited procedures. Specifically, "Administrative action by state agency – Procedures which give the State agency the authority to take the following action relating to establishment of paternity or to establishment, modification, or enforcement of support order, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other states to take the following actions: (a) Genetic testing - To order genetic testing for the purpose of paternity establishment

as provided in section 666(a)(5); and (b) Financial or other information - To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to such a subpoena."

An administrative subpoena related to child support enforcement procedures established pursuant to PRWORA should be recognized.

***AB 2452 (Leach), Chapter 771,*** specifies the bank or other financial institution account statements satisfying requirements of the required disclosures to police agencies when they are investigating alleged fraudulent use of checks, drafts or other instruments drawn upon a bank or other financial institution. This law also requires providing information in response to a child support subpoena.

Specifically, this new law:

- Allows copies of complete bank statements to be sufficient, in the specified circumstances related to check fraud, even if the statement period exceeds the exact 60-day window.

- Requires that financial institutions recognize the administrative subpoenas of other states for interstate child support enforcement.

- Requires that if the person who signs the administrative subpoena directs the financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution cannot disclose the subpoena or its response to any such owner.

- Provide that no financial institution or employee can be held liable for disclosing the information as specified above.

- Is double-joined to AB 976 (Papan), Chapter 757.

**Sex Offenders**

The crime of child molestation warrants the strict supervision and surveillance of parolees.

***AB 2799 (Olberg), Chapter 550,*** declares the Legislature's intent to create a pedophile parole placement program and requires the Megan's Law CD-ROM to be updated on a monthly basis. Specifically, this new law:

- Declares the Legislature's intent to develop, in conjunction with information disclosed pursuant to Megan's Law, a pedophile parole placement program to protect children from registered sex offenders.

- Requires the Department of Justice (DOJ) to update and distribute the CD-ROM containing registered sex offender information on a monthly basis to law enforcement.

**Minors: Informants**

A minor should not be coerced into being an informant.

***AB 2816 (Baugh), Chapter 833,*** provides no peace officer or agent of a peace officer can use a person under the age of 13 years as a minor informant, nor can such a person use a minor 13 through 17 years old as a minor informant without a court order made after certain conditions are met, but allows the use of minor informants 13 through 17 years old to be used in connection with the Stop Tobacco Access to Kids Enforcement Act.

This law requires the court to find probable cause that a minor committed an alleged offense before a minor can be used as a minor informant.

This law sets forth specific factors the court must consider before consenting to the use of a minor informant, including the maturity of a minor, the gravity of a minor's alleged offense, the safety of the public, the interests of justice, and whether the agreement is being entered into knowingly and voluntarily.

Finally, this law requires the court to advise a minor of the mandatory minimum and maximum sentence for the alleged offense, and to disclose the benefit a minor may obtain by cooperating with a peace officer or agent, before the minor can be used as an informant.

This law was an urgency measure and became effective September 25, 1998.

**Peace Officer Uniform**

Although it is common practice to sell insignias and other memorabilia from various government offices, the sale of police uniforms extends that concept beyond keepsake display. In two recent San Francisco cases, unauthorized persons used police uniforms and other such paraphernalia to perpetrate crimes and threaten the safety and security of police officers and the public.

***SB 1390 (Kopp), Chapter 279,*** expands fraudulently impersonating a peace officer to include impersonation by wearing, exhibiting or using a uniform, punishable as a misdemeanor. This law creates a new one-year enhancement for felonies committed while fraudulently impersonating a peace officer. Specifically, this law:

- Provides any person other than a peace officer who willfully wears, exhibits, or uses the authorized uniform with the intent of fraudulently impersonating a

peace officer, or of fraudulently inducing the belief that he or she is a peace officer, is guilty of a misdemeanor.

- Provides the misdemeanor is punishable by a maximum of six months in county jail and a $1,000 fine.

- Changes the word "insigne" to "insignia".

- Provides any person who fraudulently impersonates, as defined, a peace officer during the commission of a felony receives an additional one-year consecutive term of imprisonment in lieu of the misdemeanor stated above.

**Peace Officers**

Existing law has two different Penal Code Sections (417 and 417.1) that prohibit drawing or exhibiting any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner in the immediate presence of a peace officer if the person knows, or reasonably should know, by the officer's uniformed appearance or other identifying action, that he or she is in the presence of an on-duty peace officer.

The differences between the two provisions are: (1) one provision applies to specific categories of full-time police officers or sheriff's deputies, and the other provision applies to reserve or auxiliary officers or deputies; and, (2) there is a minimum mandatory custody time of nine months where the victim is in one of the designated full-time officer or deputy categories, and there is no such minimum custody time if the victim is a reserve or auxiliary officer or deputy.

Redefining "peace officers" to include all peace officers commencing with Penal Code Section 830 and including sheriffs, police officers, reserve officers, food and drug inspectors, several categories of investigators, San Francisco Bay Area Rapid Transit (BART) police, parole and probation officers, park rangers, and numerous others expands the scope of persons who can be victims.

***SB 1417 (Knight), Chapter 190,*** expands the definition of who is a peace officer for purposes of the law prohibiting drawing or exhibiting a firearm in a threatening manner in the immediate presence of a peace officer, requires reserve officers to complete specific training, and revises requirements for their supervision. Specifically, this law:

- Expands the definition of a "peace officer" for purposes of laws relating to a person who draws or exhibits any firearm (regardless of whether the gun is loaded or unloaded) in a rude, angry or threatening manner in the immediate presence of an on-duty police officer to also include: (1) reserve and auxiliary police or sheriff's officers, and (2) all persons designated as peace officers under the Penal Code and not currently listed under this law as being potential victims of this offense. An offense is punishable by either nine

months to one year in county jail and a maximum $1,000 fine or 16 months, 2 or 3 years in state prison and a maximum $10,000 fine regardless of whether the victim is a peace officer or a reserve or auxiliary peace officer.

- Repeals an existing statute relating only to drawing or exhibiting a firearm in the presence of reserve or auxiliary police officers, and recodifies such law (with an increase in punishment to require a minimum nine-month sentence) within an existing statute relating to full-time police officers.

- Requires Level II reserve officers to satisfy continuing POST training requirements.

- Requires Level III reserve officers to be supervised in the "accessible vicinity" by full-time, regular peace officers while performing specified duties, including report taking, and allows Level III reserve officers to transport prisoners without immediate supervision.

**Crime Prevention: Peace Officer Training**

Currently, existing law requires a POST basic training applicant who is not sponsored by a local or other law enforcement agency, or is not a peace officer employed by specified state and local entities, to certify in writing that he or she has no criminal history background disqualifying him or her from owning, possessing, or having control of a firearm. Specifically requiring a written certification of eligibility before an applicant can attend POST training courses on firearms should be clarified.

***SB 1442 (Rainey), Chapter 120,*** makes a technical, non-substantive change to an existing statute that allows persons who are not sponsored by a law enforcement agency and are not peace officers employed by a state or local agency, department, or district, to apply for admission to a POST basic training course.

This law clarifies that the written certification of eligibility is specifically required in order for the applicant to attend any POST course that includes carrying and using firearms.

**Public Safety: Consolidated Municipal Agencies**

In an effort to save money, some smaller municipalities have consolidated their police and fire departments into a single “public safety” agency. The public safety agency is responsible for providing traditional city police and fire prevention services. A public safety agency should meet the same quality standards as a police department.

A public safety agency is usually headed by a person who is a peace officer and given the dual title of “Chief of Police/Director of Public Safety”. However, this dual designation is purely discretionary under current law.

***SB 1452 (McPherson), Chapter 159,*** requires that any consolidated public safety agency which includes traditional law enforcement and fire protection or other emergency services be headed by a peace officer with specified training. Specifically, this new law sets forth requirements for appointment to the position of chief, director, or chief executive officer of a consolidated municipal public safety agency as follows:

- Requires peace officer status.
- Meets all requirements imposed by law, regulation, or POST guidelines and recommendations as a chief of police.
- Prohibits appointment if the above requirements are not met.
- Authorizes the chief, director, or chief executive officer of a consolidated municipal agency to have all the same rights, responsibilities and privileges as does a chief of police, such as issuance of gun permits.
- Makes additional conforming changes.

**Public Safety Officers: Evidence**

Current law contains a loophole which allows management, without penalty or liability, to alter or destroy evidence in a disciplinary proceeding against a peace officer.

***SB 1600 (Rainey), Chapter 759,*** establishes that tampering or destroying any evidence to be used in a disciplinary proceeding against a public safety officer for the purpose of harming that officer is a misdemeanor.

**Peace Officers: School Police Officer**

If a school wants to employ a school peace officer, that peace officer should be required to successfully complete POST basic training.

***SB 1627 (Hughes), Chapter 746,*** requires all school peace officers, as defined, employed on or after July 1, 1999 to complete POST basic training (currently 664 hours of training) prior to acting as peace officers. This new law "grandfathers" in existing school peace officers employed prior to that date and makes other changes relating to school peace officers. Specifically, this new law:

- Requires any school officer first employed after July 1, 1999 by a K-12 public school district or by community college police department to complete a basic training course prescribed by POST, currently consisting of 664 hours of training, before exercising the powers of a peace officer, except while participating as a trainee in a supervised, approved field training program.

- Requires POST to prepare a specialized course of instruction for the training of school peace officers, as defined, to meet the unique safety needs of a school environment. The course is intended to supplement any other training requirements.

- Requires any school peace officer first employed by a K-12 public school district or community college district before July 1, 1999 to successfully complete the new specialized training course by July 1, 2002, and any school peace officer first employed after July 1, 1999 must complete the course within two years of the date of his or her first employment.

- Provides any peace officer employed by a K-12 public school district or community college district and completed the POST-certified basic training, currently consisting of approximately 664 hours of training, must be designated a school police officer.

- Requires peace officers employed prior to July 1, 1999 by a K-12 public school district or by a community college police department to submit fingerprints on a form to be submitted to DOJ in order to retain employment.

- Requires DOJ to determine the officer has not suffered a conviction that disqualifies him or her from employment; and if the officer is required to carry a gun, DOJ must also determine the officer is not prohibited from possessing a gun.

- Includes all changes made by AB 1211 (Committee on Public Safety), Chapter 66.

**Public Safety Offices: Procedural Bill of Rights**

Government Code Section 3304(b) provides a peace officer with the opportunity for an administrative appeal of a disciplinary decision of his or her agency but has not established the direction necessary to ensure that fundamental due process is afforded the disciplined employee. Courts have interpreted statute in a widely divergent manner.

***SB 1662 (Ayala), Chapter 263,*** provides an administrative appeal instituted by a public safety officer under the Public Safety Officer's Procedural Bill of Rights Act must be conducted in conformance with rules and procedures adopted by the local public agency.

**Peace Officers**

San Francisco BART, University of California and California State University (CSU) police officers perform similar duties as other peace officers and should have the same protections.

***SB 1690 (Rainey), Chapter 760,*** adds San Francisco BART police officers, and in some cases certain California public university police officers, to various criminal and other statutes involving certain described peace officers. Specifically, this new law:

- Adds BART and CSU police officers to statute providing for an increased penalty of 25-years-to-life (rather than 15-years-to-life) where the defendant commits second-degree murder against a described peace officer acting in the line of duty or life without the possibility of parole where one of four enumerated aggravating factors is present.

- Adds BART police officers to the list of police officers for purposes of three statutes - two are misdemeanors and one is an alternate misdemeanor/felony - which criminalize giving false reports or information to certain police officers.

- Adds BART police officers to the statute making it an infraction to refuse to assist a law enforcement officer after being requested to do so under certain conditions.

- Allows active and honorable retired BART police officers to carry concealed and loaded weapons.

**Crime Prevention: Peace Officer Training**

Recent California events highlight law enforcement difficulties when responding to civil disobedience acts.

Law enforcement officers should be provided with optional training to enable officers to control civil disobedience acts with reasonable use of force and ensure public and officer safety with minimum disruption to commerce and community affairs.

***SB 1844 (Thompson), Chapter 207,*** requires POST to implement an instructional course or courses and adopt guidelines for controlling acts of civil disobedience.

**Law Enforcement: Regional Transit and Public Library Services**

This summer, the Altamont Commuter Express (ACE) Authority began service between Stockton and San Jose. The ACE Authority should have the same authority provided to transit districts and rail operators to enforce fare and other violations. The ACE Authority uses commuter trains, not buses, and does not fit in current statutory definition. A technical amendment should be made for the ACE Authority.

***SB 1936 (Johnston), Chapter 308,*** allows the ACE Authority to contract with designated persons to issue citations for infractions related to fare evasion and other public transportation-related matters. Specifically, this law:

- Gives the governing board of ACE Authority the power to contract with designated persons to act as its agents in the enforcement of fare evasion and other infractions, as specified, relating to the operation of a public transportation system if these persons complete the necessary training requirements.

- Makes certain findings and declarations regarding the necessity of a special law for the ACE Authority.

This law was an urgency measure and became effective on August 17, 1998.

**Public Officials: Harassment: Records**

Anti-government extremists are engaging in "paper terrorism" by filing false liens and other encumbrances on the property of government agencies, public officers and employees.

Consequences of false lawsuits, liens or other encumbrances against public officials and employees can be quite severe. Liens recorded against properties can take months to find and thousands of dollars in attorneys' fees to clear.

***SB 2154 (Schiff), Chapter 211,*** seeks to protect public officials and public employees from false lawsuits, liens or encumbrances. Specifically, this new law:

- Prohibits a person from filing or recording a lawsuit, lien, or other encumbrance against a public officer or employee knowing it is false, with the intent to harass the officer or employee or to influence or hinder the public officer or employee in discharging his or her official duties. This prohibition is limited to lawsuits, liens or other encumbrances pertaining to actions that arise in the course and scope of the public officer's or employee's duties.

- Authorizes a court to assess a civil penalty, of up to $5000, against any person who knowingly files, records, or directs another to file or record a lawsuit, lien, or encumbrance in violation of the above.

**Public Safety Officers: Procedural Bill of Rights**

Guidelines should be established when a public agency, or appointing authority, removes, or attempts to remove, a chief of police from office.

***SB 2215 (Lockyer), Chapter 786,*** modifies the Public Safety Officers Procedural Bill of Rights Act (Act) to provide that a chief of police cannot be fired without written notice of the reasons and an opportunity for an administrative appeal, and states this provision does not create a property interest where one does not exist by rule or law in the job of Chief of Police. Specifically, this new law provides:

- No chief of police may be removed by a public agency or appointing authority without providing the chief of police with written notice and the reasons and an opportunity for administrative appeal.

- The removal of a chief of police by a public agency or appointing authority for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration is sufficient to constitute the "reason or reasons" described above.

# RESTITUTION

## Victims of Crime

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A number of victims are not eligible for the Victims of Crime (VOC) Program.

***AB 535 (Brown), Chapter 697,*** revises definitions, time periods, and circumstances under which a victim or derivative victim may be eligible for assistance and reimbursement under the Board of Control's (BOC) VOC Program. The BOC may consider applications filed with the BOC on or after October 4, 1993 which meet these new criteria for delayed filing. The new law provides the BOC must adopt guidelines allowing the BOC to consider and approve applications for assistance based on domestic violence, taking into account the victim's age, physical condition, psychological state, and any compelling health or safety reasons including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family, evaluating a victim's cooperation with law enforcement, and giving due consideration to the degree of cooperation of which the victim is capable in light of the presence of any of these factors.

This law contains language to avoid chaptering out portions of AB 645 (Escutia) Chapter 895; and AB 1803 (Lempert), Chapter 700.

This law sunsets on January 1, 2003 adds a January 1, 2003.

This law was an urgency measure and became effective on September 22, 1998.

## Victims of Crime: Unlawful Sexual Intercourse: Reimbursement from Restitution Fund

Certain victims are precluded from applying for BOC Crime Victims Restitution Fund restitution when the victim contributed to the crime or when the victim did not sustain any physical injury. If a minor victim under 16 years of age had sexual intercourse with a person over 21 years of age and suffers emotional trauma as a result, the minor should be able to receive counseling. Such a minor should not be precluded from recovering restitution from the BOC's Crime Victims Restitution Fund simply because such a minor "contributed" to the sexual act which constitutes the crime.

***AB 645 (Escutia), Chapter 895,*** provides that a minor under 16 years of age who sustains emotional injury as a result of having consensual or non-consensual intercourse with a person over 21 years of age is presumed to have sustained physical injury for purposes of qualifying for assistance from the BOC's Crime Victims Restitution Fund as a crime victim as long as felony charges were filed. Specifically, this law:

- Limits the award to $3,000 to such a minor for purposes of mental health counseling expenses, and adds certain psychology interns training under licensed mental health professionals as persons who can provide mental health treatment reimbursable by the Crime Victims Restitution Fund.

- Expands the period for which the BOC may reimburse a victim or derivative victim, as defined, for lost wages or lost support directly resulting from the injury from two years following the crime to three years following the crime.

- Expands the definition of "derivative victim" to include residents of another state, and adds injury or death caused by vehicular manslaughter as a qualifying crime for the purposes of being able to apply for money from the Crime Victims Restitution Fund.

- Expands the definition of “crime” to include vehicular manslaughter for purposes of permitting restitution payments from the Crime Victims Restitution Fund.

- Provides, in the case of a minor, the BOC must consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether such a minor's application for financial assistance should be denied based on either the minor's involvement in the crime or the events leading to the crime, or the minor's failure to cooperate with law enforcement.

**Crime Victims: Restitution**

Under current law, a child cannot obtain Crime Victims Restitution Fund restitution in parental abduction or domestic violence cases.

***AB 1803 (Lempert), Chapter 700,*** allows children deprived of the lawful custody of their parents or guardians and children who witnessed domestic violence to obtain restitution from the Crime Victims Restitution Fund.

The new law contains language to avoid chaptering out AB 535 (Brown), Chapter 697; and AB 645 (Escutia), Chapter 895.

**Victims of Crime**

The BOC, which adminsters the Crime Victims Restitution Fund, should be given the authority to waive the deadline for good cause for an application for victim's assistance filed three years after the date of the crime or after the date the victim reaches 18 years of age. An indictment or trial may be delayed beyond three years or a decision by the district attorney not to prosecute may occur after the three-year limit.

***AB 2319 (Knox), Chapter 447,*** expands the period of time during which crime victims can file an application for financial assistance with the BOC from the Crime Victims Restitution Fund. This law provides the BOC may, for good cause, grant an extension of time for filing an application for assistance beyond three years after the date of the crime or beyond three years after the victim attains 18 years of age only if the applicant cooperated with law enforcement and prosecuting attorney and one of three other situations exists:

- The application is filed within one year from the filing of an indictment, information, or complaint alleging facts that gave rise to the application.

- The victim is called to testify in a criminal proceeding that gave rise to the application and the application is filed within one year of the completion of the victim's testimony.

- The application is filed within one year of the time that a formal written decision is made by the prosecuting attorney not to prosecute.

**Restitution Fund: Loan**

The 1997-1998 Budget authorized the General Fund to borrow $26 million from the Crime Victims Restitution Fund surplus. Under the loan's terms, the loan was to be paid by June 30, 1999 without interest. The loan was deemed necessary - along with many other one-time transactions - to balance the budget.

Due to the state's existing budget surplus, the loan can be paid with interest.

***SB 1311 (Lockyer), Chapter 5,*** requires the Department of Finance to direct the Controller to repay the $26 million loan, with interest, made from the Crime Victims Restitution Fund to the General Fund as part of the 1997 Budget Act.

**Judgments: Criminal Restitution Orders**

A restitution order should be enforced as a civil order immediately, without any delay during a period of probation (in lieu of incarceration) or parole (after release from prison).

***SB 1608 (Ayala), Chapter 201,*** provides that victim restitution is enforceable as a civil judgment immediately upon entry of the order thereby removing any delay during a period of probation or parole.

**Criminal Restitution: Disclosure of Financial Information**

Enforcing a restitution order and discovering the guilty party's assets can be expensive and difficult. A victim should have access to the guilty party's financial situation as long

as a restitution order remains unsatisfied. The victim could then make a determination as to whether to pursue enforcement and obtain legal assistance.

Additionally, an inmate should not be released to parole in another state if the inmate is subject to an unsatisfied restitution order or fine.

***SB 1768 (Kopp), Chapter 587,*** provides for increased financial disclosure by criminal defendants who may be ordered to pay restitution for the crimes they committed, and gives victims and BOC access to this financial information. Specifically, this new law:

- Provides that in any case where restitution may be ordered against a defendant, the defendant must prepare and file with the court a financial disclosure form.

- Provides it is a misdemeanor, punishable by up to six months confinement in the county jail and a maximum $1,000 fine, for a defendant to willfully state as true any material matter that he or she knows to be false on the required asset disclosure form, unless the laws of perjury apply.

- Provides the court may consider a defendant's unreasonable failure to make the financial disclosure in making sentencing decisions, and the defendant is then deemed to have waived his or her confidentiality rights to financial information he or she may have filed in connection with seeking a court appointed attorney.

- Provides Judicial Council must develop and approve official form interrogatories regarding the defendant's financial condition.

- Makes technical changes to a statute precluding a parolee from being paroled to reside in another state.

- Provides the new financial disclosure procedures become operative on January 1, 2000, but allows a majority of judges of a court to apply to Judicial Council to delay the new provisions' enforcement until no later than January 1, 2002.

- Contains a severability provision, as well as language to avoid chaptering out portions of SB 1608 (Ayala), Chapter 201; and SB 2139 (Lockyer), Chapter 93.

**Victims of Crime: Restitution**

A pilot project should be created to allow BOC, with assistance from Judicial Council, to implement a four-year pilot program, contracting with sitting judges to amend restitution orders in cases where the victim has received benefits from the BOC's Victims of Crime

program. The orders could then be amended to reflect the amount of VOC program benefits received by the victim.

***SB 2021 (Schiff), Chapter 451,*** creates a four-year pilot program within the BOC for the purpose of collaborating with judges to amend restitution orders imposed in criminal cases, provides a juvenile's inability to pay is not a compelling reason for the court not to order a restitution fine against that juvenile thereby making the rule the same as it is for adults, clarifies the BOC's lien rights, and makes other changes relating to restitution. Specifically, this new law:

- Provides the pilot program must include restitution orders imposed by the courts in the regional judicial assignments as determined by the Judicial Council and Court Operation Services encompassing the Counties of Sacramento, San Diego, and Alameda.

- Provides the BOC can decide the cost of a restitution hearing is not warranted, and forego attempting to modify restitution orders in cases where the inmate or ward does not waive a right to a hearing on the modification.

- Provides the BOC must preliminarily report to the Legislature on the pilot program no later than 1.5 years after the effective date of the program and on the program outcome within 2.5 years after the pilot program’s conclusion.

- Eliminates language which restricts the BOC's lien rights for any judgment, award or settlement recovery made by or on behalf of a victim to "damages for injuries," and clarifies that the BOC has lien rights on "any recovery made by or on behalf of the victim."

- Strengthens provisions ensuring the BOC gets notice when a victim or his or her representative brings an action or asserts a claim against the defendant for damages.

- Provides that in setting the amount of a fine imposed, the court must consider specified factors including consideration of a minor's ability to pay which may include future earning capacity, and requires that the minor have the burden of proving a lack of ability to pay.

- Provides a minor has a right to a hearing to dispute the determination of the amount of restitution, and the court can modify the amount on its own motion, or the motion of the district attorney or the victim, and requires the victim receive 10 days advance notice prior to any such hearing.

- Provides any portion of a restitution order that remains unsatisfied after a minor is no longer on probation continues to be enforceable by a victim.

# SEX OFFENSES

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## Victims of Crime: Statutory Rape: Reimbursement from Restitution Fund

Certain victims are precluded from recovering Board of Control (BOC) Crime Victims Restitution Fund assistance when the victim contributed to the crime or when the victim did not sustain any physical injury. If a minor victim under 16 years of age had sexual intercourse with a person over 21 years of age and suffers emotional trauma as a result, the minor should be able to receive counseling and not be precluded from Crime Victims Restitution Fund assistance simply because that a minor "contributed" to the sexual act constituting the crime.

***AB 645 (Escutia), Chapter 895,*** provides that a minor under 16 years of age who sustains emotional injury as a result of having consensual or non-consensual intercourse with a person over 21 years of age is presumed to have sustained physical injury for purposes of qualifying for assistance from the BOC's Crime Victims Restitution Fund as long as felony charges were filed. Specifically, this law:

- Limits the award to $3,000 to such a minor for purposes of mental health counseling expenses, and adds certain psychology interns, training under licensed mental health professionals as persons who can provide mental health treatment reimbursable by the Crime Victims Restitution Fund.

- Expands the period for which the BOC may reimburse a victim or derivative victim, as defined, for lost wages or lost support directly resulting from the injury from two years following the crime to three years following the crime.

- Expands the definition of "derivative victim" to include residents of another state, and adds injury or death caused by vehicular manslaughter as a qualifying crime for the purposes of applying for Crime Victims Restitution Fund assistance.

- Expands the definition of "crime" to include vehicular manslaughter for purposes of permitting restitution payments from the Crime Victims Restitution Fund.

- Provides, in the case of a minor, the BOC must consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether such a minor's application for financial assistance should be denied based on either the minor's involvement in the crime, events leading to the crime, or the minor's failure to cooperate with law enforcement.

## Sexually Oriented Businesses: Local Regulation

In 1969, the Legislature authorized cities and counties to prohibit (by ordinance) waiters, waitresses or entertainers from exposing certain anatomical parts in establishments serving food or beverages. The Legislature also authorized cities and counties to regulate live acts, demonstrations, or exhibitions in public places, places open to the public, or places open to public view involving the exposure of certain anatomical parts provided that such ordinances did not prohibit acts not expressly authorized or prohibited by the Penal Code. However, theaters, concert halls, and similar establishments primarily devoted to theatrical performances were exempt.

Since 1969, judicial opinions have interpreted these statutes to pre-empt cities and counties from defining "theaters" for purposes of exemption and apply only to establishments selling alcoholic beverages. As a result, adult entertainment establishments have created "juice bars" which feature live, nude entertainment where no alcoholic beverages are sold. Many establishments applying for ordinance exemption claim to be a "theater, concert hall, or similar establishment." As a city is prohibited from defining what constitutes a "theater" or "concert hall" for exemption purposes, many cities have been subject to litigation when enforcing ordinances pursuant to the 1969 legislation.

> ***AB 726 (Baugh), Chapter 294,*** is declaratory of existing law authorizing cities and counties to regulate sexually oriented businesses, as defined. This new law allows local prohibition of live, nude performances. However, the law provides this new law must not be construed to apply to any adult or sexually oriented business, as defined, already been adjudicated by a court of competent jurisdiction to be, or by action of a local body such as issuance of an adult entertainment establishment license or permit allowing the business to operate on or before July 1, 1998, as a theater, concert hall, or similar establishment primarily devoted to theatrical performances.

## Sex Offenders: Notification

The high recidivism rate of child molesters places children at significant risk. Therefore, schools should be notified when law enforcement makes a public disclosure. School administrators and their employees should also be provided with civil immunity for the good-faith dissemination of information regarding high-risk sex offenders.

> ***AB 796 (Havice), Chapter 927,*** authorizes school employees to disclose information received from law enforcement on sex offenders, as specified, and immunizes specified parties from civil liability for that disclosure.

## Child Victims: Closed-Circuit Television

Children can incur additional trauma when testifying in public courtrooms. Children who are victims of serious or violent crimes should be able to give testimony out of the presence of the accused attacker via closed-circuit television monitors.

> ***AB 1077 (Cardoza), Chapter 669,*** authorizes the testimony of a child 10 years of age or younger and the victim of a violent crime to be taken in another place and communicated to the courtroom by means of closed-circuit television.

## Sex Offenders: Registration

Current law allows immunity for specified public safety agencies releasing Megan's Law information. School districts and school officials releasing this information are not provided with the same immunity.

> ***AB 1078 (Cardoza), Chapter 930,*** allows persons and entities to release sex offender registration information if specifically authorized by law enforcement. Further, this law provides that any representative of a public or private educational institution, day-care facility or child-care custodian who, in good faith, disseminates sex offender registration information as provided by law is immune from civil liability.

## Sexual Assault: Victim's Support

A "support person" selected by a sexual assault victim for medical examinations and law enforcement interviews can undermine the fact-finding process. Under certain circumstances, medical providers and law enforcement should be able to exclude a support person's presence when detrimental to that process.

> ***AB 1115 (Knox), Chapter 456,*** eliminates the right of a victim of certain sexual assaults to have a support person present during any medical evidentiary or physical examination, as well as during any interview by law enforcement authorities or district attorneys, under certain circumstances.
>
> This law provides the victim of certain sexual offenses must be notified prior to the commencement of the initial interview by law enforcement authorities that the victim has a right to have a victim's advocate and a support person of the victim's choosing present at the interview or contact. This law authorizes oral or written notice, and provides the law enforcement authority or district attorney must also notify the victim of the right to have such persons present at any interview by a defense attorney or defense investigator.
>
> Finally, this law eliminates the right of a victim of certain sexual assaults to have a support person present during any medical evidentiary or physical examination, as well as during any interview by law enforcement authorities or district

attorneys, where the medical provider, law enforcement officer or district attorney determines that it would be detrimental to the purpose of the examination or interview to have that support person present. This right to have such a support person applies to a victim of a rape, statutory rape, spousal rape, sodomy, oral copulation and unlawful penetration by a foreign object.

**Kidnapping**

Penal Code provisions relating to kidnapping young children need to be clarified. The Legislature must declare that an offender kidnapping a child under the age of 14 is subject to an enhanced penalty of 5, 8, or 11 years in state prison rather than 3, 5, or 8 years. In addition, clarification is necessary due to court confusion on how to interpret Penal Code Section 208, which prescribes the enhanced penalty.

In addition, cross-referencing corrections are necessary to fully implement AB 59 (Brown), Chapter 817, Statutes of 1997.

***AB 1290 (Havice), Chapter 925*:**

- Declares that Penal Code Section 208(b), kidnapping a child under 14 years of age, provides an enhanced penalty for a Penal Code Section 207 violation and is not a distinct substantive crime, mooting People v. Allen (S068260) and People v. Martinez (S064345).

- States it is not the Legislature's intent to change the current Penal Code Section 207 asportation standard.

- Corrects all remaining cross-references to reflect AB 59's enactment.

- Makes the following changes to Penal Code Section 667.71: (1) removes the district attorney "veto authority" on what sentence is imposed; (2) adds aggravated sexual assault on a child as a predicate offense for this habitual sexual offender statute; (3) adds continuous sexual abuse of a minor as a predicate offense to the habitual sexual offender statute; and (4) corrects AB 59's incorrect reference to kidnapping to commit a lewd act in violation of Penal Code Section 207 in Penal Code Section 667.71.

- Provides that any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor 16 years of age is guilty of an alternate felony/misdemeanor.

- States that in determining whether the offender is at least 10 years older than the child, the difference in age is measured from the birth date of the offender to the birth date of the child.

## School Employees

Education Code Sections 45123 and 44836 prohibit individuals convicted of certain sex offenses from working as classified or certificated employees in public schools. The same prohibition should apply to private school employees

***AB 1392 (Scott), Chapter 594***, provides a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level may not employ a person prohibited from employment by a public school district pursuant to any provision of this law because of his or her conviction for any crime. Specifically, this new law:

- Provides a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level may not employ a person convicted of a violent or serious felony.

- Prohibits a person prohibited from employment by a public school district because of his or her conviction for any crime from owning or operating a private school operated for profit that offers elementary or high school instruction on or after July 1, 1999.

- Creates an exception for a parent or legal guardian working exclusively with his or her child or children.

- Is incorporated within AB 2102 (Alby), Chapter 840.

## Custody: Children of Sex Offenders

Recently, the Legislature passed AB 200 (Kuehl), Chapter 849, Statutes of 1997, which required the court to state its findings when granting sole or joint custody to a parent alleged to have a history of abuse or a habitual user of controlled substances or alcohol. The court should be required to state its findings when granting custody or unsupervised visitation of a child to a sex offender or a person convicted of certain crimes against a child.

***AB 1645 (Torlakson), Chapter 131*****,** requires the court to state its findings in writing or on the record when granting custody of, or unsupervised visitation with, a child to a person required to register as a sex offender for an offense against a child or convicted of one of several enumerated offenses against a child. This requirement applies to orders granting physical or legal custody of a child.

## Parole

Paroled child molesters should not be able to reside in areas near schools.

***AB 1646 (Battin), Chapter 96,*** prohibits the Department of Corrections from placing an inmate released on parole for lewd or lascivious acts with a child under age 14 or the continuous sexual abuse of a child within one-quarter mile of any school that includes any or all of grades kindergarten to six, inclusive.

**Sex Offenders: Duties**

Technical amendments need to be made to immunity provisions of "Megan's Law".

***AB 1745 (Alby), Chapter 929,*** requires prisons, mental hospitals and the California Youth Authority (CYA) to report changes of address to the Department of Justice (DOJ) on newly committed registrants, and requires probation departments to inform persons granted conditional release of their duty to register as sex offenders.

This law also allows court findings at the time of sentencing for the purpose of requiring an offender to register as a sex offender, and requires DOJ to collect data on a registrant convicted of aggravated sexual assault of a child for purposes of operating the "900" telephone number and CD-ROM.

Additionally, this law is technical clean-up and clarifies that law enforcement agencies are immune from civil liability.

**Sex Offenses: Evidence**

An accused rapist's trial must focus on relevant facts and evidence rather than the victim's character. The admission of evidence as irrelevant as the style of a victim's dress or the length of the victim's skirt could mitigate an alleged violent sexual criminal's guilt.

***AB 1926 (Wildman), Chapter 127,*** provides that in enumerated cases alleging sexual offenses, evidence of the way the victim was dressed at the time of the crime is not admissible when offered by either party to prove consent, unless the court determines the evidence is admissible. This law also provides the "manner of dress" does not include the condition of the victim's clothing itself before, during, or after the commission of the offense. This law prevents findings of consent based solely on the manner of the victim's dress.

**Sex Offenders: Probation: Notification Requirement**

Currently, Megan's Law contains a loophole which allows a sex offender released on probation to return to the same community where the offense was committed without requiring notification to the victim or the victim's family.

Penal Code Section 3003 does not apply to sex offenders placed on probation. Law enforcement or victims do not have to be notified that convicted sex offenders are being released on probation into communities where the offenses occurred.

Although current law requires that convicted sex offenders register with local law enforcement, there is no requirement that offenders provide accurate and adequate proofs of residency.

> ***AB 1927 (Morrow), Chapter 928,*** requires the district attorney to provide victim notification forms if a defendant is convicted of specified sex offenses, and requires the sheriff to notify victims if that person is to be released on probation into the community and the date of release.
>
> This new law allows the court, in setting the conditions of probation of a person required to register as a sex offender, to require that person to stay away from the victim, the victim's residence, or place of employment.
>
> This statute requires that a person required to register as a convicted sex offender provide the registering authority with verifiable proof of residence limited to a California driver's license, California identity card, rent receipt, utility receipt, printed checks, banking documents, or any other reliable document to prove residency. If a person has no residence, he or she may sign a statement to that effect, and be allowed to register.

**Sex Offender Registration: Disclosure**

Currently, a sex offender is not required to inform an individual of his or her sex offender status when applying for a volunteer position or job working with children.

> ***AB 2259 (Aguiar), Chapter 959*****,** requires registered a sex offender to disclose his or her status as a registered sex offender when he or she applies for or accepts "a position as an employee or volunteer with any person, group, or organization where the registrant is working directly and in an unaccompanied setting with minor children on more than an incidental or occasional basis or has supervision or disciplinary power over minor children." The disclosure is to the person, group or organization with which the registrant applies for or accepts a position.
>
> A violation of this offense is a misdemeanor punishable by up to six months in jail and/or a fine up to $1,000 and does not constitute a continuing offense.

**Computer Crime**

Stalkers are now using computers, faxes, and other means to invade the privacy and the rights of their victims.

***AB 2351 (Hertzberg), Chapter 826****,* expands current stalking and telephone harassment laws to include contacts made through electronic communication devices such as computers. This new law requires police officers to receive training in high technology crimes and requires the Office of Criminal Justice Planning (OCJP) to conduct a feasibility study with respect to a state-operated center on computer forensics. Specifically, this new law:

- Adopts the definition of "electronic communication device" (ECD) found in current federal law.

- Clarifies that the ECD definition applies to the credible threat and other provisions included in AB 2351.

- Provides that an offense committed by means of an ECD medium, including the Internet, may be deemed to have been committed where the electronic communication was originally sent or was first viewed by the recipient.

- Clarifies that telephone calls or electronic contacts made in good faith are not punishable.

- Amends the police officer training provision so that high technology crime training is mandated only for police officers or sheriffs at a supervisory level, and offered to all officers and sheriffs as part of continuing professional training.

- Appropriates $230,000 from the General Fund to the OCJP for the purpose of performing the feasibility study.

**Sex Offender Registration**

A sex offender required to register with local law enforcement should also be required to disclose his or her status if he or she applies for a volunteer or paid position placing the sex offender in contact with children.

Existing law permits a judge to declare, on or after a grant of probation, that a felony offense is a misdemeanor. In addition, judges are presently allowed to stay the execution of sentences pending appeal, in the court's discretion. A person convicted of a registerable sex offense should not be relieved of the responsibility to register because he or she has filed an appeal and the appeal's merits have not been decided.

Under existing law, a person required to register as a sex offender must register with law enforcement within five days of coming into the jurisdiction. Although these individuals are often monitored by state parole, they are not required to provide their parole agents with proofs of registration.

***AB 2680 (Wright), Chapter 960,*** precludes the court from relieving a person required to register as a sex offender from the responsibility to register, expands the list of specified sex crimes for which the CDC is required to give notice as to the scheduled release of an inmate to law enforcement, and requires a parolee required to register as a sex offender to provide proof of registration to the parole authority within six days of release. This new law also provides that the six-day period for providing proof of registration may be extended in unusual circumstances precluding the parolee from meeting the deadline.

**Criminal Procedure: Territorial Jurisdiction**

Domestic violence, stalking, child abuse and molestation victims have a high propensity of being the repeat victims of the same criminal committing the same crime. The ability to combine the trials of these crimes into one should be provided, thus reducing the number of trials where a victim must testify at and the overall time the victim is involved in a trial.

***AB 2734 (Pacheco), Chapter 302,*** vests territorial jurisdiction for specified offenses, such as spousal rape and stalking, that occur in more than one territorial jurisdiction in any jurisdiction where at least one offense occurred if the defendant and the victim are the same for all the offenses.

Specifically, this new law vests territorial jurisdiction for specified offenses (including spousal rape, rape in concert, child abuse, spousal abuse, sodomy, lewd and lascivious conduct with a child, oral copulation with a minor, and stalking) that occur in more than one territorial jurisdiction in any jurisdiction where at least one offense occurred if the defendant and the victim are the same for all the offenses.

**Sex Offenders: CD ROM**

The crime of child molestation warrants the strict supervision and surveillance of parolees.

***AB 2799 (Olberg), Chapter 550,*** declares the Legislature's intent to create a pedophile parole placement program and requires the Megan's Law CD-ROM to be updated on a monthly basis. Specifically, this new law:

- Declares the Legislature's intent to develop, in conjunction with information disclosed pursuant to Megan's Law, a pedophile parole placement program to protect children from registered sex offenders.

- Requires the DOJ to update and distribute the CD-ROM containing registered sex offender information on a monthly basis to law enforcement.

## Crimes: Statutory Rape

In 1993, the Legislature enacted SB 22 (Russell), Chapter 596, Statutes of 1993, which made statutory rape gender neutral. While most code sections were conformed to reflect SB 22's enactment, several were not.

Statutes not conformed were brought to light by virtue of the Court of Appeals decision in Guevara v. Superior Court (1997) 60 Cal.App.4th 261. In Guevara, a male defendant transmitted HIV to an underage female. He was held to answer (HTA) in the Superior Court for a number of charges, including a Penal Code Section 12022.85 enhancement which provides a three-year enhancement for transmitting the human immunodeficiency virus (HIV) while committing a sex offense.

Among Guevara's contentions challenging the HTA order was Penal Code Section 12022.85 (an enhancement statute not conformed to reflect SB 22's enactment) was invalid because it was not gender neutral, i.e., did not include females transmitting HIV to underage males HIV or, for that matter, underage females transmitting HIV to underage males. While the Court of Appeal upheld the applicability of the enhancement statute based on prior California Supreme Court precedent upholding the pre-SB 22 statute, the Court of Appeal decision brought to light the need to amend various statutes to reflect that the unlawful sexual intercourse statute was made gender neutral.

***SB 351 (Peace), Chapter 55,*** makes cross-referencing and conforming changes to reflect the fact that the statutory rape statute was made gender neutral in 1993. Specifically, this new law makes conforming changes to the following sections:

- Education Code Section 51553(b)(8), which mandates that sex education courses discussing sexual intercourse advise pupils regarding statutory rape.

- Penal Code Section 1202.1(e)(2), which mandates court-ordered AIDS test for specified sex offenses, including statutory rape.

- Penal Code Section 12022.85 (the section litigated in Guevara) provides a sentence enhancement of three years for committing specified sex offenses, including statutory rape, with knowledge of HIV positive status. By making this cross-reference gender neutral, this law expands the application of this enhancement. While current law applies only to unlawful sex with minor females, this law applies the enhancement to unlawful sex with minor males as well.

## Sexually Violent Predators

In cases where a superior court makes a ruling that a sexually violent predator (SVP) can be unconditionally released, the Department of Mental Health (DMH) is required to notify the sheriff, chief of police, or both, as well as the district attorney having

jurisdiction over the community to which the person will be released at least 15 days prior to that release.

However, when the court makes such a determination that neither DMH nor any other agency has the authority to place or direct the unconditionally released individual to a specific community, there is no method of determining who should be notified of the unconditional release.

SVP notification duties should be established which are equivalent to the Board of Prison Terms' and CDC's notification duties when criminals who committed violent felonies are being released on parole. However, the law provides for a civil commitment for an individual who, in all likelihood, will not have any residual parole obligation. Unlike parolees, a person being released from a civil commitment has no special obligations unless, because of the nature of a prior conviction, he or she must register with local authorities as a sex offender.

***SB 536 (Mountjoy), Chapter 19,*** specifies that until January 1, 1999 the two-year civil commitment period for SVPs must not be reduced by any time spent in custody prior to the order of commitment nor will any credits be applicable to reduce the two-year period. This new law requires the DMH to notify local law enforcement officials 15 days prior to a court recommendation for community out-patient treatment or a SVP's unconditional release. Specifically, this law:

- Requires the DMH to notify local law enforcement officials 15 days prior to the submission to a court of its recommendation for community out-patient treatment for any person committed as a SVP or its recommendation not to pursue that person's re-commitment.

- Provides that no person may be placed in a state hospital pursuant to civil commitment provisions until there has been a determination, as specified, that there is probable cause to believe that individual is likely to engage in SVP behavior.

- Specifies that until January 1, 1999, the two-year period of commitment commences on the date on which the court issues the initial order of the commitment; the two-year period is not reduced by any time spent in a secure facility prior to the order of commitment; and for subsequent extended commitments, the term of commitment is from the date of the termination of the previous commitment.

- Adds two SVP statutes which sunsetted on January 1, 1998.

- Continues in effect provisions added by AB 1496 (Sher), Chapter 4, Statutes of 1966, to permit the BPT to order a person referred to the DMH for evaluation to remain in custody for no more than 45 days for evaluation in

- those circumstances when the restoration of credits to the person's term of imprisonment renders the normal time frames for SVP commitment impracticable.

This new law was an urgency measure and became effective April 14, 1998.

**Human Immunodeficiency Virus**

Intentionally exposing an individual to HIV is as much a criminal act as assault with a deadly weapon. Both crimes involve one person willfully and intentionally causing injury to another by using an instrument in a manner known to cause serious harm.

***SB 705 (Rainey), Chapter 1001,*** creates a new criminal offense for HIV exposure. Specifically, this new law:

- Makes it a felony for a person to expose another to HIV by engaging in unprotected sexual activity, punishable by three, five or eight years in state prison, when the infected person knows at the time of the unprotected sex that he or she is infected with HIV, has not disclosed HIV positive status, and acts with the specific intent to infect the other person with HIV.

- Provides evidence that the person had knowledge of his or her HIV positive status without additional evidence is not sufficient to prove specific intent.

- Creates a defense that sexual activity took place between consenting adults after full disclosure by the infected person of his or her HIV-positive status.

- Provides for the confidentiality of the victim's identity during prosecution, but gives the victim's actual name to defense counsel as part of discovery.

- Requires notwithstanding privacy provisions, records of the diagnosis, prognosis, testing, or treatment of any person relating to HIV be disclosed in a criminal investigation for a violation of the felony created by this law if authorized by a court order.

- Requires a court, in deciding whether to issue an order, to weigh the public interest and the need for disclosure against any potential harm to the defendant, and upon issuance of an order, to impose safeguards.

- Provides that any disclosure in violation of a court order is subject to existing misdemeanor and civil penalties.

- States that nothing in this law is intended to compel the testing to determine the HIV status of any victim of an alleged crime(s) or restrict or eliminate anonymous AIDS testing programs.

- Defines "sexual activity" and "unprotected sexual activity".

**Stalking: Cyberstalking**

Using electronic communication to stalk or harass a victim should be punishable under current stalking and harassment laws. New “high tech stalking” can take the form of threatening, obscene or hateful e-mail, pages, voice mail messages, etc.

***SB 1796 (Leslie), Chapter 825,*** updates stalking and harassment laws to accommodate new technology. This new law clarifies that electronic communication devices include, but are not limited to, telephones, cellular telephones, computers, video recorders, televisions, fax machines, or pagers. Specifically, this new law:

- Expands the definition of "credible threat" in the tort of stalking to include threats communicated by means of an electronic communication device or a threat implied by a combination of verbal, written, or electronically communicated statements.

- Clarifies that the provisions of the “terrorist threat” offense apply to threats made by means of an electronic communication device.

- Expands the definition of "credible threat" in the stalking statute to include a threat performed through the use of an electronic communication device or a threat implied by a pattern of conduct or a combination of verbal, written or electronically communicated statements and conduct, made with specified intent.

- Expands the offense related to harassing phone calls to include repeated contact by means of electronic communication device with specified intent.

- Creates a good-faith exception for obscene or threatening telephone calls or electronic contacts made with intent to annoy.

- Provides that any offense committed by use of an electronic communication device or medium, including the Internet, may be deemed to have been committed where the electronic communication or communications were originally sent or first viewed by the recipient.

- Incorporates the definition of "electronic communication" device used in a specified provision of federal law.

This law became operative as AB 2351 (Hertzberg), Chapter 826, was also enacted.

## Sexually Violent Predators

Current law does not provide for advance DMH notification of the result of a SVP civil commitment proceeding. Without advance notification, the DMH is unable to properly plan for sufficient staffing, treatment and housing needs for individuals ordered by the court to a state hospital. The specified county attorney should be required to notify the DMH of the decision to file a petition for a SVP commitment within 15 days of the decision. The designated court should also notify the DMH of the probable cause hearing outcome within 15 days of the decision and within 72 hours of the trial's outcome.

Current law does not require the court to notify the DMH of its action related to the conditional or unconditional release of a patient on "court leave" while held in the local jail waiting court proceedings related to the SVP civil commitment process. The DMH loses physical custody of an individual on "court leave" and has no reliable means of obtaining information as to when or what action the court may take. Upon its decision to immediately release a SVP, the court should be required to notify the sheriff and/or chief of police as well as the district attorney having jurisdiction over the community to which the SVP is to be released.

***SB 1976 (Mountjoy), Chapter 961,*** revises the SVP Law. Specifically, this new law:

- Provides that the Atascadero State Hospital is used to house SVPs only until a permanent housing and treatment facility is available.

- Limits the DMH to sending 10 referrals for probable cause hearings to any county in any 30-day period except upon agreement of the presiding judge of the court, the district attorney (DA), the public defender (PD), the sheriff, and the DMH Director.

- Provides the above paragraph be implemented in Los Angeles pursuant to a letter of agreement among the DMH, the Los Angeles County DA, the Los Angeles County PD, the Los Angeles County sheriff, and Los Angeles County Superior Court. The letter of agreement governs the number of persons referred to the Los Angeles County Superior Court pursuant to the above paragraph.

- Requires the county-designated attorney to notify the DMH of its decision regarding the filing of a petition for commitment within 15 days of making its decision.

- Requires the court to forward a copy of the minute order of the probable cause hearing outcome to the DMH within 15 days of its decision.

- Extends to July 1, 2001 the sunset provision on the law [enacted on April 14, 1998 in SB 536 (Mountjoy), Chapter 19] which provides that the two-year term of commitment under the SVP statutes commences on the date on which the court issues the initial order of commitment and is not reduced by any time spent in a secure facility prior to the order of commitment. For subsequent commitments, the term is from the date of termination of the previous commitment.

- Expands the reporting requirements to provide that when the DMH makes any recommendation to the court concerning either the release or commitment of a SVP, at least 15 days in advance of making its recommendation, it must notify specified local law enforcement officials: (1) where the person may be released for community outpatient treatment; (2) where the person last resided; and, (3) the county which filed for the person's civil commitment.

- Requires the DMH to notify the Department of Corrections' SVP Parole Coordinator, when appropriate.

- Provides that when the DMH makes a recommendation to pursue re-commitment, not to pursue re-commitment, or seeks a judicial review of commitment of any SVP, the DMH must provide written notice of that action to the sheriff or chief of police as well as the DA having jurisdiction over the community in which the person maintained his or her last legal residence, the community into which the person will be released, and the county which filed for the person's civil commitment.

- Requires the court to notify the Department of Corrections' SVP Parole Coordinator if the court orders a SVP released.

- Requires CDC to notify the DMH, the sheriff and/or chief of police, as specified, and specified victims if the court orders a SVP released.

- Provides if the court authorizes the release of a SVP otherwise subject to parole, the person must remain in physical custody for a period up to 72 hours or until the Department of Corrections' SVP Parole Coordinator makes arrangements, whichever is sooner, and adds a severability clause.

This law was an urgency measure and became effective on September 29, 1998.

**Real Property Disclosure: Registered Sex Offenders**

A real estate broker's or salesperson's duty to disclose registered sex offender information regarding registered sex offenders should be clarified.

***SB 1989 (Polanco), Chapter 645,*** requires specified leases and real property sales contracts for residential real property to contain a notice that prospective purchasers and lessees can access the database containing information about registered sex offenders. This law also provides that, upon delivery of the notice, the lessor, seller, or broker is not required to provide additional information regarding the proximity of registered sex offenders. This law also provides that nothing in this law alters any existing duty of the lessor, seller, or broker of disclosure under any other law. Specifically, the new law:

- Adds clarifying language that the information in the database is for public access relative to the location of sex offenders.

- Require that the database be updated on a quarterly basis.

- Provides that callers access the information via a "900" telephone service and must have specific information they are seeking.

- Provides that the provisions of this law apply to written agreements and contracts entered into on or after July 1, 1999.

# VEHICLES

## Vehicles: Ignition Interlock Devices: Driver's License Restriction

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Since 1993, California has had a mandatory ignition interlock device (IID) law for all convicted driving under the influence (DUI) repeat offenders. However, as of 1996 (the most recent year for which data are available), only 16 percent of repeat offenders were required to have IIDs when sentenced.

In response to the failure of existing IID policy, the California Ignition Interlock Task Force was established to develop new IID law and programs. The task force included law enforcement, the judiciary, treatment program providers, administrative agencies, grass-roots organizations, the Legislature, and the IID industry.

***AB 762 (Torlakson), Chapter 756,*** changes IID programs for DUI offenders and gives the Department of Motor Vehicles (DMV) responsibility to administer those programs. Specifically, the law:

- Provides that a court may require the DMV to prohibit a first-time DUI offender from driving without an IID for up to three years, particularly when aggravating factors such as high blood alcohol content (BAC) are shown.

- Provides that when a person is convicted of a DUI within seven years of a prior DUI, the DMV must order a two-year suspension of his or her license. The person may apply to the DMV for a restricted license after completing 12 months of the suspension or probation period, subject to the offender agreeing to maintain a verified IID, as specified; providing proof of financial responsibility; and enrolling in either a licensed 18- or 30-month program.

- Provides that the court may direct the DMV to issue a restricted, not suspended, license allowing travel to employment or alcohol/drug treatment to a person convicted of a second DUI within seven years under the following circumstances: (1) the person submits proof of enrollment in an 18-month or 30-month alcohol/drug program and submits proof of financial responsibility; and (2) the restriction may be removed upon completion of treatment, but a full suspension must be imposed upon failure to remain in treatment.

- Provides that where a person is convicted of DUI with injury within seven years of a prior DUI, the court must order a three-year revocation of the person's driver's license. After completing 18 months of the revocation period, the person may apply to the DMV for a restricted license subject to the following: (1) the person maintains a verified IID, as specified, and provides proof of financial responsibility; and (2) the person completes either a licensed 18-month program or the first 18 months of a 30-month program.

- Provides that when a person is convicted of a third DUI within seven years, the DMV must order a three-year revocation of the person's driver's license. After completing 18 months of the revocation period, the person may apply to the DMV for a restricted license where he or she complies with the IID requirements, shows proof of financial responsibility and completes an 18-month program or the first 18 months of a 30-month program.

- Provides that when a person is convicted of a fourth DUI within seven years, the court must order a four-year license revocation. After completing 24 months of the revocation period, the person may apply to the DMV for a restricted license subject to requirements for installation and verification of an IID and the 18-month/30-month alcohol/drug education programs applicable to third-time DUI offenders and second-time DUI with injury offenders.

- Provides the court must require that a person convicted of driving with a DUI-related suspended license must maintain an IID for up to three years.

- Provides that when any person who fails three times to comply with IID maintenance requirements, the person's license must be suspended or revoked for the full period imposed by law.

- Requires the DMV to assume control over the IID program currently administered by the courts, court administration and county probation officers only if multiple offenses are involved.

- Requires the DMV to immediately suspend the privilege to operate a motor vehicle for any person who attempts to remove an IID.

- Requires the DMV to report to the Legislature on or before January 1, 2002 regarding the IID program.

- Provides that this law becomes effective on July 1, 1999 to allow the DMV to properly administer the program, and sunsets the IID program as of January 1, 2005.

- Adds language to avoid chaptering out AB 2674 (Cardenas), Chapter 661.

**Alcoholic Beverages: Minors**

Three minors died in a drunk driving accident. The driver (a minor) had consumed alcohol purchased by an adult. The adult served 30 days in a county jail and the driver is serving an eight-year sentence in state prison.

***AB 1204 (Keeley), Chapter 441,*** increases the misdemeanor penalty for a defendant who purchases an alcoholic beverage for another person under the

age of 21 years if the person under age 21 then consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person.

This law also provides that punishment of the misdemeanor violation is imprisonment in a county jail for a minimum term of six months, and a maximum term of one year and/or by a fine up to $1,000.

**Vehicles: Crimes: Penalties**

Under current law, a person who willfully flees or attempts to elude a pursuing peace officer and proximately causes serious injury or death can be charged with an alternate felony/misdemeanor. Violations result in one year of imprisonment in the county jail or two, three, or four years in state prison, specified fines, or both fines and imprisonment.

Current penalties do not sufficiently address the willful nature of the crime or the public danger. In the past three years, the California Highway Patrol reports pursuits have resulted in 5,437 collisions, 3,361 injures, and 93 fatalities.

***AB 1382 (Olberg), Chapter 256,*** increases the punishment for driving a motor vehicle while willfully evading a peace officer and proximately causing serious bodily injury or death from an alternate felony/misdemeanor, punishable by two, three, or four years in prison, or up to one year in county jail, to an alternate felony/misdemeanor punishable by three, four or five years in state prison or up to one year in the county jail.

**Vehicles: Department of Motor Vehicles: Records: Confidentiality**

Current law lists the types of employees who can request that their home address be held confidential in DMV records. Generally, the list includes state, county and municipal employees associated with law enforcement or public service and workers engaged in confidential investigations. This confidentiality also extends to those employees' spouses and children, regardless of their places of residence. Retired peace officers may request that their home address be held confidential on a permanent basis.

However, DMV records, including those listed above, are open for public inspection although the DMV is to "completely obliterate" home addresses when displaying them to the public.

***AB 1389 (Perata), Chapter 458,*** requires the home address of the surviving spouse or child of a peace officer slain in the line of duty be withheld from public inspection for three years following the peace officer's death.

## Vehicles: Residence Addresses: Confidentiality: Penalties

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According to the University of Southern California (USC), approximately six months ago the DMV determined that private universities are no longer authorized to access vehicle registration information. The USC states that they had been accessing DMV records to enforce delinquent parking citations since 1991.

The USC argues that DMV record access is crucial to large universities in urban areas where student parking is limited and effective parking enforcement is necessary to maintain traffic control.

The USC issues approximately 35,000 citations annually and has experienced a 25-percent increase in the number of citations going to notice status since losing DMV access. Without DMV access, universities no longer have the ability to mail notices to registered owners with campus parking violations. The enforcement method currently used is towing and impounding vehicles.

***AB 1730 (Wright), Chapter 885,*** seeks on-line access to DMV confidential address records for an independent institution of higher education. Specifically, this new law:

- Implements on-line access as a pilot program to be terminated on January 1, 2002, and requires an evaluation of the pilot program to the Legislature by January 1, 2001.

- Amends parking enforcement provisions to allow parking violation notices to be sent to a registered vehicle owner by electronic facsimile as an alternative to mailing.

- Clarifies that failure to properly display a vehicle license plate is an equipment violation and included in provisions allowing the citation penalty to be reduced to $10 upon correction. This is only authorized when valid license plates had been previously issued for the cited vehicle.

- Makes a technical correction that allows this law to apply to more than a single institution.

## Prostitution: Vehicles: Impoundment: Suspended Driver's License

Under existing law, license suspensions can be used as a tool to reduce prostitution in residential areas. A court may suspend any person's privilege to operate a motor vehicle for up to 30 days when convicted of soliciting or engaging in an act of prostitution within 1,000 feet of a private residence and using a vehicle. The suspension period should be extended.

***AB 1788 (Wright), Chapter 758,*** allows a driving privilege to be restricted to travel to and from employment and education for up to six months for any person convicted of soliciting an act of prostitution or engaging in lewd acts within 1,000 feet of a private residence.

This law allows a city, county, or city and county to establish a pilot program allowing the temporary impoundment of a motor vehicle used in the commission of specific crimes relating to prostitution.

**Fines and Forfeitures: Alcohol and Drug Testing**

County programs designed to assist people with drug and alcohol problems are funded by Penal Code Sections 23103, 23104, 23152, or 23153 violators. These funds are utilized in several different ways: some monies fund alcohol and drug treatment programs administered by county health departments and some monies fund other county departments for alcohol and drug testing programs.

Funding is forwarded to the county by the arresting jurisdiction, such as a city. Basing these transfers on convictions rather than collections provides a more stable funding source for the counties and programs they operate.

***AB 1796 (Mazzoni), Chapter 171*****,** provides that in Sonoma County, the transfer of $50 by the arresting authority to the fund to pay for alcohol and drug testing occurs upon conviction and not upon collection of the money. The $50 transfer described above applies notwithstanding other provisions of law.

**Driving Offenses: Drug and Alcohol Assessment Program**

Despite statistics indicating California's success in reducing DUIs, DUI accounts for the highest number of all adult and juvenile arrests. Deaths caused by DUI occur at nearly an eight-to-one ratio when compared with accidental firearm fatalities.

Approximately 30 percent of those convicted of DUI are repeat offenders. After a offender fails the regularly assigned drinking driver program, the offender's alcohol and/or drug condition should be assessed to determine what, if any, additional treatment is needed.

***AB 1916 (Torlakson), Chapter 656,*** makes several changes to the drug and alcohol program requirements for a person convicted of a DUI. This law adds new requirements for counties in the development and operation of their drug and alcohol programs.

This law requires the court, as a condition of probation, to refer a first-time DUI offender whose blood alcohol concentration (BAC) is less than 0.20 percent to attend at least a three-month or longer licensed program consisting of at least 30 hours of program activities. This law also requires the court, as a condition of

probation, to refer a first-time DUI offender whose BAC is more than 0.20 percent or refused to take a chemical test to participate in at least a six-month or longer licensed program consisting of at least 45 hours of program activities.

Furthermore, this law provides that all counties must develop, implement, operate and administer an alcohol and drug problem assessment program for any person convicted of a second DUI and fails one time to comply with program rules. The court also may order any person convicted of a DUI to participate in the assessment program.

**Vehicles: Peace Officers: Fleeing**

While law enforcement is doing its best to reduce the number of high-speed pursuits, such pursuits are increasing.

***AB 2066 (Sweeney), Chapter 472,*** requires a six-month minimum sentence for willfully fleeing or evading a peace officer while driving in a willful or wanton manner with disregard for the safety of persons or property, and allows for a publicity campaign regarding these changes if specified moneys are provided to fund the campaign.

**Theft: Vehicles: Receipt of Stolen Property**

Existing law provides for criminal penalties for the possession of, or receiving, stolen property but is not specific on vehicle theft.

Existing law also provides for increased penalties for a second or subsequent automobile theft or grand theft auto conviction. However, existing law does not include the theft of all motor vehicles, trailers, motorized special construction equipment, motorized vessels, or unlawfully receiving any of these vehicles.

***AB 2390 (House), Chapter 710,*** creates a new stolen property section specific to vehicles that provides any person buying or receiving any motor vehicle, trailer, motorized special construction equipment, or motorized vessel stolen or obtained by theft, extortion, knowing the property be stolen or illegally obtained is punishable by imprisonment in the state prison for 16 months, 2 or 3 years, or by up to one year in the county jail.

This law expands the list of felony grand theft offenses. A second or subsequent conviction requires increased penalties to include the grand theft of any type of motor vehicle, trailer, motorized special construction equipment, or motorized vessels, or the unlawful receiving or possession of any of the above.

## Driving Under the Influence: Penalties

The minimum amount of custody for a person convicted of a second DUI should be increased.

> ***AB 2674 (Cardenas), Chapter 661,*** increases the minimum amount of custody imposed in a second-time DUI case from 48 hours (not necessarily continuous) to 96 hours and must be served in two increments consisting of a continuous 48 hours each.

## Vehicles: Driving Under the Influence: Reckless Driving: Alcohol and Drug Education Programs

Under current law, over 15,000 individuals per year are allowed to plead guilty to "wet-reckless" driving violations (Vehicle Code Section 23103.5) in lieu of DUI violations (Vehicle Code Section 23152). According to the latest DMV data, 96 percent of individuals arrested for DUIs have BACs at or above 0.08 percent (the DUI legal limit). The mean average BAC for reported wet-reckless convictions is 0.098 percent and 260 convictions were at or above 0.16 percent (twice the legal limit). In spite of this, those pleading guilty to wet-reckless driving are not required to attend any form of alcohol/drug and driving educational programs. While a judge can order an individual to attend a DUI program for first-time offenders, the vast majority of individuals are fined.

> ***SB 1176 (Johnson), Chapter 487,*** requires a person who pleads guilty to, and is placed on probation for, alcohol- or drug-related reckless driving to complete a licensed alcohol/drug education program as a condition of probation. Specifically, this new law:
>
> - Requires a person pleading guilty to and placed on probation for an alcohol- or drug-related reckless driving charge to complete a licensed alcohol/drug education program as a condition of probation.
>
> - States the court may waive the education program requirement if compelling circumstances exist and the court states its reasons for that finding on the court record.
>
> - Adds provisions to avoid chaptering out two sections in SB 1186 (Senate Committee on Public Safety), Chapter 118.

## Vehicles: Driving under the Influence

Various code sections need to be reconciled.

> ***SB 1186 (Senate Committee on Public Safety), Chapter 118,*** reorganizes, renumbers, and rephrases various Vehicle, Business and Professions, Harbors

and Navigation, Health and Safety, Insurance and Penal Code provisions relating to DUI and makes confirming changes.

**Motor Vehicles: Lands: Alcohol and Drugs**

Existing law regulates the consumption and possession of alcoholic beverages by motor vehicle drivers and passengers during highway travel. However, the law does not include these same drivers when not traveling on highways.

***SB 1639 (O'Connell), Chapter 384,*** expands the laws prohibiting an individual from possessing an open container of alcohol while in a motor vehicle on a highway to include a motor vehicle on specified public lands.

This new law provides that an open container of alcohol may be kept in an off-highway motor vehicle on a highway or on lands covered under the Chappie-Z'berg Law in a "locked container" if the vehicle is not equipped with a trunk. In a motor vehicle not an off-highway vehicle and not equipped with a trunk, an open container may be kept in an area not normally occupied by the driver or passengers.

**Vehicles: Vessels: Aircraft: Driving or Operating While Under the Influence**

Existing law contains several loopholes relating to DUI.

***SB 1890 (Hurtt), Chapter 740,*** eliminates the option to choose a urine test in most DUI cases. In most situations, if the blood test or the breath test is unavailable, the person must submit to whichever of those two tests is available. If both tests are unavailable, the person must submit to a urine test. This law also provides other exceptions, such as when an officer suspects a person is under the influence of alcohol and drugs.

# VICTIMS

## Victims of Crime: Unlawful Sexual Intercourse: Reimbursement from Restitution Fund

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Certain victims are precluded from applying for Board of Control (BOC) Crime Victims Restitution Fund assistance when the victim contributed to the crime or when the victim did not sustain any physical injury. If a minor victim under 16 years of age had sexual intercourse with a person over 21 years of age and suffers emotional trauma as a result, the minor should be able to receive counseling and should not be precluded from recovering restitution from the Crime Victims Restitution Fund simply because such a minor "contributed" to the sexual act constituting the crime.

***AB 645 (Escutia), Chapter 895,*** provides that a minor under 16 years of age who sustains emotional injury as a result of having consensual or non-consensual intercourse with a person over 21 years of age is presumed to have sustained physical injury for purposes of qualifying for assistance from the BOC's Crime Victims Restitution Fund as long as felony charges were filed. Specifically, this law:

- Limits the award to $3,000 to such a minor for purposes of mental health counseling expenses, and adds certain psychology interns training under licensed mental health professionals as persons who can provide mental health treatment reimbursable by the Crime Victims Restitution Fund.

- Expands the period for which the BOC may reimburse a victim or derivative victim, as defined, for lost wages or lost support directly resulting from the injury from two years following the crime to three years following the crime.

- Expands the definition of "derivative victim" to include residents of another state, and adds injury or death caused by vehicular manslaughter as a qualifying crime for the purposes of being able to apply for money from the Crime Victims Restitution Fund.

- Expands the definition of "crime" to include vehicular manslaughter for purposes of permitting restitution payments from the Crime Victims Restitution Fund.

- Provides, in the case of a minor, the BOC must consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether such a minor's application for financial assistance should be denied based on either the minor's involvement in the crime, the events leading to the crime, or the minor's failure to cooperate with law enforcement.

## Crime Victims: Criminal Procedure

Children can incur additional trauma when testifying in public courtrooms. Children who are the victims of serious or violent crimes should be able to give testimony out of the presence of accused attackers via closed-circuit television monitors.

> ***AB 1077 (Cardoza), Chapter 669***, authorizes the testimony of a child 10 years of age or younger and the victim of a violent crime to be taken in another place and communicated to the courtroom by means of closed-circuit television.

## Sexual Assault: Victim's Support

A "support person" selected by a sexual assault victim for medical examinations and law enforcement interviews can undermine the fact-finding process. Under certain circumstances, medical providers and law enforcement should be able to exclude a support person's presence when detrimental to that process.

> ***AB 1115 (Knox), Chapter 456,*** eliminates the right of a victim of certain sexual assaults to have a support person present during any medical evidentiary or physical examination, as well as during any interview by law enforcement authorities or district attorneys, under certain circumstances.
>
> This law provides the victim of certain sexual offenses must be notified prior to the commencement of the initial interview by law enforcement authorities that the victim has a right to have a victim's advocate and a support person of the victim's choosing present at the interview or contact. This law authorizes oral or written notice, and provides the law enforcement authority or district attorney must also notify the victim of the right to have such persons present at any interview by a defense attorney or defense investigator.
>
> Finally, this law eliminates the right of a victim of certain sexual assaults to have a support person present during any medical evidentiary or physical examination, as well as during any interview by law enforcement authorities or district attorneys, where the medical provider, law enforcement officer or district attorney determines that it would be detrimental to the purpose of the examination or interview to have that support person present. This right to have such a support person applies to a victim of a rape, statutory rape, spousal rape, sodomy, oral copulation and unlawful penetration by a foreign object.

## DNA and Forensic Identification Data Base and Data Bank of 1998

A more effective aid for identifying, apprehending and prosecuting criminal suspects; linking unsolved crimes; solving past crimes; and exonerating the innocent is needed. Law enforcement can use a data bank more consistently in solving crimes and quickly identify a repeat offender who commits a crime from biological evidence (hair, a fleck of skin, or blood) - the type of evidence commonly found at a crime scene.

***AB 1332 (Murray), Chapter 696,*** establishes the DNA and Forensic Identification Data Base and Data Bank Act of 1998 and adds legislative intent that the Department of Justice (DOJ) identify $500,000 from existing resources to fund the costs of implementing this law during the first six months of its operation. Specifically, this new law:

- Requires all laboratories, including the Department of Justice's DNA laboratories, contributing DNA profiles for inclusion in California's DNA Data Bank to be accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB).

- Requires each laboratory to submit to DOJ for review the annual report required by the ASCLD/LAB that document the laboratory's adherence to ASCLD/LAB standards.

- Requires the DOJ to catalog all statistical or research information requests obtained from the DNA Data Bank.

- Provides that, commencing January 1, 2000, the DOJ is required to submit an annual letter to the Legislature including specified information with respect to each request for information obtained from the DNA Data Bank.

- Expands the list of crimes for which samples must be taken for the Data Bank, including mayhem and torture.

- Provides that any person convicted of specified offenses and committed to state prison, county jail, any institution under the jurisdiction of the California Youth Authority (CYA) where he or she was confined or is granted probation, or is released from a state hospital, as specified, must provide two specimens of blood, a saliva sample, right thumbprints and a full palm print impression to that institution or, if granted probation, to a person as specified.

- Requires expunging a person's information and materials in the Data Bank when the underlying conviction or disposition has been reversed and the case dismissed, the defendant has been found factually innocent, the defendant has been found not guilty, or the defendant has been acquitted.

- Authorizes the DOJ to dispose of unused specimens and samples.

- Provides California Department of Corrections' and CYA's duties and requirements under this law will commence on July 1, 1999.

- Revises legislative declarations and purpose and adds technical amendments.

## School Employees

Education Code Sections 45123 and 44836 prohibit individuals convicted of certain sex offenses from working as classified or certificated employees in public schools. The same prohibition should apply to private school employees

***AB 1392 (Scott), Chapter 594***, provides a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level may not employ a person prohibited from employment by a public school district pursuant to any provision of this law because of his or her conviction for any crime. Specifically, this new law:

- Provides a person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level may not employ a person convicted of a violent or serious felony.

- Prohibits a person prohibited from employment by a public school district because of his or her conviction for any crime from owning or operating a private school operated for profit that offers elementary or high school instruction on or after July 1, 1999.

- Creates an exception for a parent or legal guardian working exclusively with his or her child or children.

- Provisions of this law which amend the Education Code are incorporated in AB 2102 (Alby), Chapter 840.

## Children

Recently, the Legislature passed AB 200 (Kuehl), Chapter 849, Statutes of 1997, which required the court to state its findings when granting sole or joint custody to a parent alleged to have a history of abuse or a habitual user of controlled substances or alcohol. The court should be required to state its findings when granting custody or unsupervised visitation of a child to a sex offender or a person convicted of certain crimes against a child.

***AB 1645 (Torlakson), Chapter 131*****,** requires the court to state its findings in writing or on the record when granting custody of, or unsupervised visitation with, a child to a person required to register as a sex offender for an offense against a child or convicted of one of several enumerated offenses against a child. This requirement applies to orders granting physical or legal custody of a child.

## Crime Victims: Restitution

Under current law, a child cannot obtain Crime Victims Restitution Fund restitution in parental abduction or domestic violence cases.

***AB 1803 (Lempert), Chapter 700,*** allows children deprived of the lawful custody of their parents or guardians and children who witnessed domestic violence to obtain restitution from the Crime Victims Restitution Fund.

This new law contains language to avoid chaptering out AB 535 (Brown), Chapter 697; and AB 645 (Escutia), Chapter 895.

**Sex Offender Registration: Disclosure**

Currently, a sex offender is not required to inform an individual of his or her sex offender status when applying for a volunteer position or job working with children.

***AB 2259 (Aguiar), Chapter 959*****,** requires registered a sex offender to disclose his or her status as a registered sex offender when he or she applies for or accepts "a position as an employee or volunteer with any person, group, or organization where the registrant is working directly and in an unaccompanied setting with minor children on more than an incidental or occasional basis or has supervision or disciplinary power over minor children." The disclosure is to the person, group or organization with which the registrant applies for or accepts a position.

A violation of this offense is a misdemeanor punishable by up to six months in jail and/or a fine up to $1,000 and does not constitute a continuing offense.

**Child Abuse: Reports**

The protection of children is one of society's most important responsibilities. Every day, children are abused or injured, often at the hands of those responsible for their immediate care. Attorneys representing children under the care of the county must receive information in an expedient manner from county employees regarding abused or injured children even when the county itself may be held liable for the injury.

***AB 2316 (Knox), Chapter 900,*** increases the ability of an attorney representing a child in protective custody to obtain information regarding any abuse inflicted on the child by: (1) requiring employees of a child protective agency to timely report to the child's attorney when the employee knows or suspects a child has been the victim of child abuse; and (2) requiring the child protective agency to cooperate in discovery. Specifically, the new law:

- Requires any employee of a child protective agency who knows or reasonably suspects that a child in protective custody has been the victim of child abuse to, within 36 hours, send or have sent to the attorney who represents the child in dependency court a copy of the suspected child abuse and neglect report, as specified.

- Requires that all information requested from a child protective agency regarding a child in protective custody, or from a child's guardian ad litem, be provided to the child's counsel within 30 days.

- Clarifies that an attorney is not required to assume the responsibilities of a social worker and is expected to provide non-legal services to the child.

**Computer Crime**

Stalkers are now using computers, faxes, and other means to invade the privacy and the rights of their victims.

***AB 2351 (Hertzberg), Chapter 826,*** expands current stalking and telephone harassment laws to include contacts made through electronic communication devices such as computers. This new law requires police officers to receive training in high technology crimes and requires the Office of Criminal Justice Planning (OCJP) to conduct a feasibility study with respect to a state-operated center on computer forensics. Specifically, this new law:

- Adopts the definition of "electronic communication device" (ECD) found in current federal law.

- Clarifies that the ECD definition applies to the credible threat and other provisions included in this law.

- Provides that an offense committed by means of an ECD medium, including the Internet, may be deemed to have been committed where the electronic communication was originally sent or was first viewed by the recipient.

- Clarifies that telephone calls or electronic contacts made in good faith are not punishable.

- Amends the police officer training provision so that high technology crime training is mandated only for police officers or sheriffs at a supervisory level, and offered to all officers and sheriffs as part of continuing professional training.

- Appropriates $230,000 from the General Fund to the OCJP for the purpose of performing the feasibility study.

**Child Custody: Incarcerated Parents**

Court should not be able grant custody or unsupervised visitation to a convicted murderer unless the court finds that there is no risk to the health, safety and welfare of the child and states its reasons on the record.

***AB 2386 (Bordonaro), Chapter 705*****,** provides that no person is granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety and welfare, and states its reasons in writing or on the record. Specifically, this bill provides in making the determination, the court may consider, among other things, the following:

- The wishes of the child if the child is of sufficient age and capacity to reason so as to form an intelligent preference.

- Credible evidence that the convicted parent was a victim of abuse, as defined in Family Code Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

- Testimony of an expert witness qualified under Evidence Code Section 1107 that the convicted parent suffers from the effects of battered women's syndrome.

This law is identical to AB 2745 (Cardoza), Chapter 704, and becomes operative only if AB 2745 is also enacted and becomes effective on or before January 1, 1999.

This law is double-joined with AB 1645 (Torlakson), Chapter 131.

**Corrections: Detainees: Prohibited Employment**

Like other states, California has a prison-work program allowing inmates to perform useful work. However, some contracts with private businesses allow inmates to have access to private and confidential customer information.

Recently, the national media have reported stories regarding prisoners given access to personal information through prison work programs. One Texas prison program allowed felons to enter the names and addresses of people who had filled out consumer surveys into computers and a convicted rapist began sending a woman intimidating letters about her personal responses. In California, a Ventura inmate was allowed to make airline reservations as part of a prison-work program and fraudulently used a customer's credit card number to charge $9,000 worth of merchandise.

***AB 2649 (Figueroa), Chapter 551,*** precludes specified types of inmates from working in situations that provide them with access to personal information and requires other inmates having access to personal information to disclose that

they are confined before taking any personal information from any individual. Specifically, this new law:

- Provides none of this law's provisions apply to inmates or wards in employment programs or public service facilities where incidental contact with personal information may occur.

- Provides a juvenile only has to disclose he or she is a ward when asked.

- Provides any program involving the taking of personal information over the telephone by a juvenile ward is subject to random monitoring of his or her telephone calls and such programs must provide supervision at all times.

**Criminal Procedure: Territorial Jurisdiction**

Domestic violence, stalking, child abuse and molestation victims have high propensities of being repeat victims of the same criminal committing the same crimes. Trials for these crimes should be combined into one, reducing the number of trials a victim must testify at and the overall time victims are involved.

***AB 2734 (Pacheco), Chapter 302,*** vests territorial jurisdiction for specified offenses, such as spousal rape and stalking, that occur in more than one territorial jurisdiction in any jurisdiction where at least one offense occurred if the defendant and the victim are the same for all the offenses.

Specifically, this new law vests territorial jurisdiction for specified offenses (including spousal rape, rape in concert, child abuse, spousal abuse, sodomy, lewd and lascivious conduct with a child, oral copulation with a minor, and stalking) that occur in more than one territorial jurisdiction in any jurisdiction where at least one offense occurred if the defendant and the victim are the same for all the offenses.

**Children: Incarcerated Parents**

Courts should not be able to grant custody or unsupervised visitation to a convicted murderer unless the court finds that there is no risk to the health, safety and welfare of the child and states its reasons on the record.

***AB 2745 (Cardoza), Chapter 704*****,** provides that no person is granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety and welfare, and states its reasons in writing or on the record.

This law is identical to AB 2386 (Bordonaro), Chapter 705, and becomes operative only if AB 2386 is also enacted and becomes effective on or before January 1, 1999.

**Minors: Protective Orders**

Juvenile court judges need a clear directive that minors violating restraining orders are within the juvenile court's jurisdiction and may be declared wards of the court. In one particular case, two young girls were allegedly followed, threatened with death, and harassed by an 11-year-old classmate. The superior court refused to allow one girl's mother to petition for a civil harassment order, contending that current law does not allow the enforcement of such an order against minors.

Pursuant to the California Rules of Court, a minor is permitted to appear in court without counsel, with a guardian, for securing or opposing such orders. This bill requires courts to allow minors to appear in court with a guardian, without counsel, to request or oppose a request for restraining and protective orders.

***SB 326 (Leslie), Chapter 706,*** codifies an existing rule of court by:

- Requiring courts to allow minors over age 12 to appear in court without a guardian and without counsel for the purpose of requesting or opposing a protective or restraining order.

- Authorizing minors under age 12 to appear in court without counsel, but with a guardian, for the same purpose.

- Allows minors over age 12 to appear in court with neither a guardian nor counsel. Current law allows minors over age 12 to similarly appear only with regard to restraining orders sought by or imposed against a person with whom the minor has had a dating relationship.

This new law was an urgency measure and became effective on October 12, 1998.

**Public Records: Confidential Information**

In Washington, a highly successful program has been operating since 1991. The program allows individuals who experienced certain types of domestic violence to keep their residential addresses confidential and provide substitute addresses for use by state and local agencies in public records. Currently, 800 individuals are participating in that program. One-half of those program participants are children and one-half are adult women, with a few male participants.

***SB 489 (Alpert), Chapter 1005,*** creates an address protection program for victims of domestic violence, as defined by the Penal Code. Participants receive

substitute addresses, mail forwarding service, and name and address confidentiality in marriage and voter records. Specifically, this new law:

- Requires the Secretary of State to provide substitute addresses for program participants and forward their mail to their actual addresses. For purposes of this program, “domestic violence” is defined as “the willful infliction of corporal injury resulting in a traumatic condition perpetrated against a spouse, cohabitant, or person with whom the perpetrator has a child”.

- Requires an applicant to submit a statement of whether there are any existing court actions or orders involving child support, custody, or visitation to ensure the program is not used to avoid such obligations. Program participation does not affect custody or visitation orders in effect prior to, or during, program participation and does not constitute evidence of domestic violence for purposes of making custody or visitation orders.

- Requires program participants to designate the Secretary of State as an agent for service of process and the Secretary of State to forward legal documents received to program participants within three days of receiving them.

- Provides immunity from liability for the Secretary of State and its employees for any action brought by any person injured as a result of the handling of mail on behalf of the program participant.

- Allows the Secretary of State or the address confidentiality program manager the ability to terminate a program participant's certification and invalidate his or her authorization card for various reasons, including that the determination that false information was used in the application process or that participation in the program is being used as a subterfuge to avoid detection of illegal or criminal activity, apprehension by law enforcement, or custody or visitation orders. This law also provides that a person who makes false claims in order to get into the program is guilty of a misdemeanor.

- Requires a county clerk to keep such records confidential if requested by a program participant, unless requested by a law enforcement agency or by a court order to a person identified in the order.

- Sunsets the program on January 1, 2005 and requires the Secretary of State to submit a report to the Legislature detailing the total number of pieces of mail forwarded to program participants, the number of program participants, the average length of time a participant remains in the program and the targeted code changes needed to improve the program's efficiency and cost effectiveness.

- Provides that in order to qualify for confidentiality status, an application must be completed in person at a community-based victims' assistance program. The application must contain all of the following documents: (1) a police report indicating domestic violence; (2) a temporary or permanent restraining order; (3) proof of a stay of three or more nights in a domestic violence shelter facility in the last year; (4) a sworn statement from the applicant stating whether there are any existing court orders or court actions involving the applicant for child support, child custody, or child visitation to ensure that the program is not being used to avoid court-ordered obligations; and (5) a designation of the Secretary of State as an agent for purposes of receiving mail and other information that requires verification of receipt for individuals in the program.

- Provides the Secretary of State will accept applications beginning July 1, 1999.

**Stalking: Cyberstalking**

Using electronic communication to stalk or harass a victim should be punishable under current stalking and harassment laws. New “high tech stalking” can take the form of threatening, obscene or hateful e-mail, pages, voice mail messages, etc.

***SB 1796 (Leslie), Chapter 825,*** updates stalking and harassment laws to accommodate new technology. This new law clarifies that electronic communication devices include, but are not limited to, telephones, cellular telephones, computers, video recorders, televisions, fax machines, or pagers. Specifically, this new law:

- Expands the definition of "credible threat" in the tort of stalking to include threats communicated by means of an electronic communication device or a threat implied by a combination of verbal, written, or electronically communicated statements.

- Clarifies that the provisions of the “terrorist threat” offense apply to threats made by means of an electronic communication device.

- Expands the definition of "credible threat" in the stalking statute to include a threat performed through the use of an electronic communication device or a threat implied by a pattern of conduct or a combination of verbal, written or electronically communicated statements and conduct, made with specified intent.

- Expands the offense related to harassing phone calls to include repeated contact by means of electronic communication device with specified intent.

- Creates a good-faith exception for obscene or threatening telephone calls or electronic contacts made with intent to annoy.

- Provides that any offense committed by use of an electronic communication device or medium, including the Internet, may be deemed to have been committed where the electronic communication or communications were originally sent or first viewed by the recipient.

- Incorporates the definition of "electronic communication" device used in a specified provision of federal law.

- Provides this law becomes operative only if AB 2351 (Hertzberg), Chapter 826, is also enacted.

## Youthful Offenders

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A more specific policy should be established regarding CYA notification to parents of CYA wards who are seriously ill, seriously injured, or victims of violent crime

***SB 2081 (Schiff), Chapter 496,*** ensures that parents of a confined child be notified if their child is seriously ill, seriously injured or is the victim of a serious offense, as specified. Specifically, this law:

- Provides whenever any minor under the CDC jurisdiction is need of medical, surgical, or dental care, the CDC may authorize, upon the recommendation of the attending physician or dentist, as applicable, the performance of that necessary medical, surgical or dental service.

- Provides the parents or guardians of any minor in the custody of the state or county, if they can reasonably be located, must be notified within 24 hours by the public officer responsible for the well-being of that minor of any serious injury or serious offense committed against the minor upon reasonable substantiation that a serious injury or offense occurred.

- Provides that the above notification provision does not apply if the minor requests that his or her parents or guardians not be informed and the chief probation officer or the CYA director, as appropriate, determines it would be in the best interest of the minor not to inform the parents or guardians.

- Defines "serious offense" and "serious injury" for purposes of this law.

## Victims of Crime: Emergency Awards: Funeral and Burial Expenses

Under current law, emergency awards are available to a victim or a derivative victim for loss of income or support, emergency medical expenses, and other losses incurred as a direct result of a crime or may be reasonably anticipated during the first 90 days after

the initial filing of an emergency application. The amount of the emergency award cannot exceed $2,000.

Funeral and burial expenses should be included under an emergency award.

> ***SB 2202 (Haynes), Chapter 557,*** clarifies the Board of Control's (BOC) authority to make emergency payments to an individual for costs incurred for funeral and burial expenses of a crime victim, and increases the amount of such an emergency payment from $2,000 to $5,000. This law allows the BOC to include burial expenses in the class of losses that may qualify for an emergency award. Additionally, this law increases the emergency award cap to $5,000 and reflects the amount currently authorized under the Victims of Crime Program.

# WEAPONS

## SKS Rifles

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Any person or company who bought or possessed a SKS firearm before the firearm was classified as an “assault weapon” should not be subject to criminal prosecution.

> ***AB 48 (Wright), Chapter 909,*** grants immunity from criminal prosecution to a person who possessed or transferred a SKS rifle in California between January 1, 1992 and December 19, 1997. This new law requires persons to relinquish or dispose of such weapons prior to January 1, 2000 or be subject to being arrested and charged with an offense which is an alternate felony/misdemeanor. This law also requires the Department of Justice (DOJ) to buy back such weapons and appropriates $1.3 million for such purchases.

## Peace Officers: Warrantless Arrest

Under current law, if an officer has reasonable cause to believe a person is carrying a loaded, concealed weapon, the officer can make a warrantless arrest even if the offense did not occur in the officer's presence. However, an officer cannot make such a warrantless arrest for an offense that did not occur in the officer's presence and the offender is carrying a concealed unloaded weapon. Officers should make such arrests to ensure public safety.

For instance, when a person is found carrying an unloaded concealed weapon at an airport security screening station, the only way to place the suspect into custody is for the screener to make a citizen's arrest. A screener is not compelled to make a citizen's arrest and airline and security company policy is not to make a citizen's arrest. The only recourse is for the responding officer is to confiscate the weapon and allow the suspect to continue.

> ***AB 247 (Scott), Chapter 224,*** permits a peace officer to make a warrantless arrest for a misdemeanor firearm offense occurring at an airport where the offender carried a concealed firearm without a permit in an area to which access is controlled by the inspection of persons and property not in the officer's presence and the officer makes the arrest as soon as he or she has reasonable cause to believe the violation occurred.
>
> This new law requires the concealable firearm violation to occur within an area of the airport controlled by the inspection of persons and property before the officer can make a warrantless misdemeanor arrest.
>
> This new law contains chaptering language to avoid conflicts with AB 1767 (Havice), Chapter 699; and SB 1470 (Thompson), Chapter 182.

## Body Armor

In November 1994, a criminal was able to fend off 120 armed police officers for 32 minutes. The gunman, protected by full body armor, killed a San Francisco police officer.

In 1997, a North Hollywood bank robbery led to a one-hour confrontation between two criminals shielded by full body armor and 350 police officers, resulting in two deaths and injuries to more than 10 other persons.

***AB 1707 (Wildman), Chapter 297,*** the "James Guelff Body Armor Act of 1998", prohibits a person convicted of a violent felony from purchasing, owning or possessing body armor. This new law allows the police chief or sheriff to grant an exception or limited relief where a petitioner's employment, livelihood, or safety depends on the ability to possess and use body armor and contains legislative intent relating to the exercise of broad discretion to fashion appropriate relief where warranted.

This new law provides that law enforcement officials enforcing this law against persons granted relief are immune from any liability for false arrest unless specified circumstances were present.

## Concealed Firearms: License to Carry

The annual renewal of carry licenses for judges, court commissioners and magistrates of courts of record should be extended for up to three years. These individuals have continuing justification for licenses and are significantly less likely to have criminal records.

***AB 1795 (Runner), Chapter 110,*** increases the time periods for certain pistol carry licenses and exempts from public disclosure certain information on license applications and issued licenses. Specifically, this law increases the valid duration period for licenses to carry pistols, revolvers, and other firearms capable of being concealed upon a person ("pistol carry licenses") from one year to up to three years for judges and full-time court commissioners or magistrates of federal and California courts.

This law also provides that home addresses and telephone numbers of peace officers, judges, magistrates and full-time court commissioners of California courts of record and the federal courts on applications for pistol carry licenses, as well as the pistol carry licenses themselves, are exempt from disclosure pursuant the existing California Public Records Act.

## Centralized List of Licensees: Sales and Manufacture

Typically, gun shows have several licensed firearms dealers offering merchandise for public sale. Gun show promoters must be able to determine a person's eligibility to conduct firearm transactions to ensure there are no illegal firearm sales or other transactions.

***AB 1871 (Baca), Chapter 268,*** authorizes gun show promoters to access the DOJ's centralized list of licensed firearms dealers.

The provisions of this law are incorporated into SB 63 (Peace), Chapter 908.

## Weapons: Tracing Requirement

Firearms are serialized in order to identify weapon source and ownership. California has been a centralized handgun registration state at point of transfer or importation since 1923. Persons acquiring handguns in California and those persons moving to California must register the handguns with DOJ. In addition, procedures have been established to encourage persons who acquired handguns prior to registration requirements to register their handguns with the DOJ.

While California has a centralized handgun registration system, state law does not mandate tracing seized guns. Other states, principally Connecticut, Massachusetts, and New York, have active tracing programs which resulted in a reduction of the number of guns used in crimes.

Improvements in tracing have occurred as the BATF has made significant technical strides in tracing guns. These improvements have proved to be particularly useful in identifying "straw man" purchasers and other illegal gun traffickers.

In addition, state law has to be conformed to federal law by deleting the exemption from background checks for long gun curios and relics in order to comply with the federal Brady Bill. The Brady Bill requires, as of November 30, 1998, all firearm purchasers to undergo criminal background checks under the National Instant Criminal Background Check System (NICS). The state exemption from the California background check for long gun curios and relics must be deleted in order for background checks to be conducted through the state's existing Dealer Record of Sale (DROS) process to comply with federal law. If this exemption is not repealed, all California gun transfers could not legally occur.

***AB 2011 (Hertzberg), Chapter 2011,*** explicitly requires that law enforcement agencies trace seized guns through DOJ and BATF. Specifically, this law:

- Requires, under DOJ's supervision, local law enforcement agencies to develop a Serial Number Restoration Plan establishing goals for reducing the

number of recovered firearms that cannot be traced, and makes an appropriation to DOJ for this purpose.

- Expands the information required to be reported to DOJ by local law enforcement agencies relating to recovered firearms, and requires DOJ to implement an electronic system by January 1, 2002, to receive and forward such information

- Creates a locked container transport exemption for persons wishing to serialize their handguns. In addition, this law revises the DROS form.

- Requires that a serial number be on a modern handgun as a condition of transfer of ownership, requires the tracing of all guns that law enforcement seizes, and subjects long-gun curios and relics to the DROS process.

- Makes it a misdemeanor for any person to sell or otherwise transfer his or her ownership in a handgun unless the firearm bears either the name of the manufacturer, the manufacturer's make or model, and a manufacturer's serial number or the identification number or mark assigned to the firearm by the DOJ.

- Makes technical changes to the tracing requirements in this law.

- Makes a General Fund appropriation of $521,000 over two fiscal years to finance the tracing required by this law.

- Provides that this law becomes effective on November 30, 1998, but delays implementation of an electronic system to receive and forward information to the BATF until January 1, 2002.

- Contains language to avoid chaptering out provisions of SB 63 (Peace), Chapter 908.

**Firearms**

In the last 10 years, more than 30 states have changed to “shall-issue” pistol carry licenses.

***AB 2022 (Wright), Chapter 910,*** modifies criteria and application processes for a license to carry a concealed pistol, revolver, or other firearm capable of being concealed upon the person ("pistol carry license"). Specifically, this law:

- Authorizes a sheriff to additionally issue a license to carry a concealed pistol to an applicant who: (1) spends a substantial period of time in the applicant's principal place of employment or business in the county or a city within the county, and (2) provides that a location may be considered an applicant's

"principal place of employment or business" only if the applicant is physically present in the jurisdiction during a substantial part of his or her working hours for purposes of that employment or business.

- Provides that, pertaining to a license issued on the basis above: (1) such licenses are valid for any period of time up to 90 days; (2) such licenses are valid only in the county in which the license was originally issued; (3) the licensee gives a copy of the license to the licensing authority of the city, county, or city and county in which he or she resides; (4) the licensing authority that originally issued the license informs the licensee verbally and in writing in at least 16-point type of the obligation to give a copy of the license to the licensing authority of the city, county, or city and county of residence; and, (5) any application to renew or extend the validity of, or reissue, a license may be granted only upon the concurrence of the licensing authority that originally issued the license, and the licensing authority of the city, county, or city and county in which the licensee resides.

- Provides that prior to any license to carry a pistol being issued, the applicant must have completed a course of training which: (1) does not exceed 16 hours and include instruction on at least firearm safety and the law regarding the permissible use of a firearm; (2) for license renewal applicants, may be any course acceptable to the licensing authority, be no less than four hours, and include instruction on at least firearm safety and the law regarding the permissible use of firearm; and (3) for new licenses, may be up to a maximum 24-hour community college course if uniformly required of all applicants.

- Extends the time period for which a regular license may be valid from not more than one year to not more than two years and extends as the period of time for a license issued to a reserve peace officer from a maximum of three years to up to four years.

- Expressly authorizes the practice now followed in a number of counties whereby the chief or other head of the municipal police department enters into an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses, renewals of licenses, and amendments to licenses, and issue pistol carry licenses.

- Requires that within three months of the effective date of this law, each licensing authority will publish and make available a written policy summarizing the provisions of law pertaining to sheriffs and police chiefs issuing pistol carry licenses.

- Requires the Attorney General (AG), on or before July 1, 1999, to convene a committee composed of one representative of the California State Sheriffs'

- Association, one representative of the California Police Chiefs' Association, and one representative of DOJ to develop a standard application form for pistol carry licenses.

- Requires that the application include a section summarizing the statutory provisions of state law resulting in the automatic denial of a pistol carry license.

- Provides that an applicant not be required to fill out any forms or provide any information not otherwise required on the standard form prescribed by the AG except to clarify or interpret information provided by the applicant on the standard application form.

- Requires the licensing authority gives written notice to the applicant indicating if the license is approved or denied within 90 days of the initial application for a new license or a license renewal or 30 days after receipt of the applicant's criminal background check from the DOJ, whichever is later.

- Requires that commencing on or before January 1, 2000, and annually thereafter, each licensing authority submits to the AG the total number of licenses issued to peace officers and judges, and that the AG collects and records the information submitted pursuant to this law by county and licensing authority.

- Changes the fees which may be charged for licenses to: (1) not more than $100 for a new license (not a renewal), excluding fingerprint and training costs (the current fee is $3 with a cost-of-living increase allowed), limits the initial local fee to 20 percent of the total, with the rest due only upon issuance of the license, and allows a cost-of-living increase for local fees; (2) in case of an amended license, not more than a $10 fee, except there is a cost-of-living increase allowed; (3) in case of a license renewal, allows a fee up to $25, with a cost-of-living increase allowed; (4) adds that except for those fees authorized, no requirement, charge, assessment, fee, or condition that requires the payment of any additional funds by the applicant be imposed by any licensing authority as a condition of the application for a license; (5) specifies that if psychological testing on the initial application is required by the licensing authority, a licensed psychologist used by the authority for its own employees may be designated; and (6) provides that the applicant may be charged for the actual cost of the testing in an amount up to $150. Additional psychological testing of an applicant seeking license renewal is required only if there is compelling evidence to indicate that a test is necessary. There is a $150 cap on additional testing.

- This law incorporates provisions of AB 1795 (Runner), Chapter 110.

## License to Manufacture Firearms

In June 1997, Frontline (a Public Broadcasting Service program) described a Federal BATF investigation which discovered an estimated 14,000 guns were stolen or missing from Lorcin Engineering, a California firearms manufacturing firm. Lorcin Engineering had not recorded many serial numbers before the guns were stolen - it was not even known if some guns had stamped serial numbers stamped on them before the guns were stolen.

Penal Code Section 12071 mandates extensive security requirements for firearm dealers and requires dealers to inform local law enforcement of firearm theft. However, existing law does not address firearm manufacturing.

> ***AB 2188 (Scott), Chapter 398,*** requires large-scale federal licensed firearms manufacturers to be licensed by DOJ, imposes licensing conditions, and imposes sanctions for violating those provisions.

## Firearms: University or College Campus

The Legislature needs to clarify the Gun Free School Zone Act of 1995, which prohibits possession of a firearm on or within 1,000 feet of the grounds of any school.

> ***AB 2609 (Lempert), Chapter 115,*** clarifies the Gun Free School Zone Act to prohibit bringing or possessing any firearm on the grounds of, or in any buildings owned or operated by, a public or private university or college used for the purpose of student housing, teaching, research or administration contiguous or clearly marked university property. This law exempts specified law enforcement and security personnel.
>
> In addition, this law clarifies that firearms are not permitted on specified university or college property including places of residence or places of business, and requires a college or university to post a prominent notice at primary entrances on its property that is not contiguous to the main campus grounds stating that firearms are prohibited on that property.

## Pistol-Revolver Delivery Record

State law denominates certain firearm transfers "operation-of-law" transactions.

An "operation-of-law" transaction is when a person transferring a gun is exempt from obtaining a gun dealer's license. In addition, the transaction is exempt from the requirement that gun delivery be conducted through a dealer or local law enforcement agency. However, the transaction is subject to handgun registration and a person must obtain a basic firearm safety certificate. Compliance procedures for "operation-of-law" transactions can be confusing.

In addition, as a result of the federal NICS, the state must implement its role as the point-of-contact agency in order for legal gun transfers to continue. Federal regulations require a second background check if a gun is not collected within 30 days DROS form completion.

***SB 63 (Peace), Chapter 908***, makes the following changes to state law:

- Requires as a condition of dealer licensure, a posted notice advising customers that federal regulations implementing the Brady Handgun Violence Prevention and National Instant Check System provide that if actual possession of a firearm is not taken with 30 days of the completion of the background check paperwork, a second background check will be conducted in order for the customer to take physical possession of that firearm.

- Requires a gun dealer to notify DOJ if a firearm is not delivered within the 30-day period set forth in the Federal regulations listed above.

- Subjects a licensed gun dealer to license forfeiture and a misdemeanor for violation.

- Clarifies that delivery of firearms to finders of lost firearms are operation-of-law transactions.

- Updates cross-references to reflect recent numbering changes in federal regulations.

- Shifts to a law enforcement agency, instead of the gun recipient, the responsibility of submitting handgun registration paperwork when the agency delivers the handgun on operation-of-law-transactions.

- Adds clarifying language in the warning dealers must post admonishing a person not to leave a loaded firearm when a child can access the firearm as set forth in AB 491 (Keeley), Chapter 460.

- Contains language to avoid chaptering out changes made by AB 2011 (Hertzberg), Chapter 911; and AB 1871 (Baca), Chapter 268.

**Firearms Dealers**

Current law authorizes the DOJ to collect a $14 fee on each gun purchase to cover the cost of conducting a criminal background and mental history check on the gun purchaser. However, statute was drafted in a manner that imposed the fee on the gun dealer and gun dealers pass fees on to purchasers. The Board of Equalization has ruled that if the fee is passed on to the purchaser, the fee becomes part of the dealer's gross receipts and subject to sales tax.

This fee should not be taxed the same as an item of tangible personal property.

***SB 591 (Johnson), Chapter 922,*** exempts from the sales tax the current authorized $14 fee charged by the DOJ to determine whether a person is qualified to purchase a firearm.

# MISCELLANEOUS

## Mental Health: Disclosure of Records: Law Enforcement

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During criminal investigations, law enforcement officers encounter psychiatric hospital staffs who refuse to release information about a patient without a court order. The inability to obtain the necessary information often lengthens an investigation and may result in potential suspects avoiding arrest. Currently, an offender can use a psychiatric hospital, or move from hospital to hospital, to elude police and jeopardize public safety.

> ***AB 302 (Runner), Chapter 148,*** allows for the release of information as to whether or not a person is a patient in a mental health facility when a law enforcement officer lodges with the facility a warrant of arrest or an abstract of such a warrant showing that the person named in the warrant is wanted for the commission of a serious or violent felony.
>
> Information that can be requested and released is limited to whether or not the person named in the arrest warrant is presently confined in the facility. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the law enforcement officer may not enter without first obtaining a valid search warrant or permission of the facility staff. This law requires that this procedure be implemented with minimum disruption to health facility operations and patients.

## Sexually Oriented Businesses: Local Regulation

In 1969, the Legislature authorized cities and counties to prohibit (by ordinance) waiters, waitresses or entertainers from exposing certain anatomical parts in establishments serving food or beverages. The Legislature also authorized cities and counties to regulate live acts, demonstrations, or exhibitions in public places, places open to the public, or places open to public view involving the exposure of certain anatomical parts provided that such ordinances did not prohibit acts not expressly authorized or prohibited by the Penal Code. However, theaters, concert halls, and similar establishments primarily devoted to theatrical performances were exempt.

Since 1969, judicial opinions have interpreted these statutes to pre-empt cities and counties from defining “theaters” for purposes of exemption and apply only to establishments selling alcoholic beverages. As a result, adult entertainment establishments have created “juice bars” which feature live, nude entertainment where no alcoholic beverages are sold. Many establishments applying for ordinance exemption claim to be a “theater, concert hall, or similar establishment.” As a city is prohibited from defining what constitutes a “theater” or “concert hall” for exemption purposes, many cities have been subject to litigation when enforcing ordinances pursuant to the 1969 legislation.

***AB 726 (Baugh), Chapter 294,*** is declaratory of existing law authorizing cities and counties to regulate sexually oriented businesses, as defined. This new law allows local prohibition of live, nude performances. However, this new law must not be construed to apply to any adult or sexually oriented business, as defined, already adjudicated by a court of competent jurisdiction to be, or by action of a local body such as issuance of an adult entertainment establishment license or permit allowing the business to operate on or before July 1, 1998, as a theater, concert hall, or similar establishment primarily devoted to theatrical performances.

## Small Claims Court: Jurisdiction

The small claims court jurisdiction of $5,000 was established by AB 3916 (Lempert), Chapter 1683, Statutes of 1990. AB 3916 also established a $2,500 jurisdictional limit for all small claims court actions involving a defendant guarantor.

The current $2,500 jurisdictional limit for small claims actions involving a defendant guarantor substantially limits the ability of a consumer to recover damages from a contractor's bond. The limit should be raised.

***AB 771 (Margett), Chapter 240,*** increases the jurisdiction of small claims court for actions against defendant guarantors (i.e., sureties for persons required by law to post a bond) who are required to respond based on the actions or omissions of others. Specifically, this law:

- Makes the small claims court jurisdictional limit for actions against defendant guarantors or sureties $4,000.

- Specifies that this increased jurisdictional limit applies only to defendant guarantors and sureties who charge fees for their guarantor or surety services.

- Adds legislative findings and declarations that it is necessary and appropriate to increase the jurisdictional limit in small claims court for claims against defendant guarantors who charge fees for their guarantor or surety services and provide contract benefits to persons paying the fees.

- Requires the court, upon written request of the defendant guarantor or surety, to grant one 30-day postponement of the hearing.

## Arson

Current law requires convicted arsonists to register with local police agencies; however, in many instances, this information is never communicated to fire agencies (the investigative body in arson cases).

***AB 1844 (Thompson), Chapter 359,*** requires law enforcement to make arson registration information available to local fire officials.

## Land Use: Sexually Oriented Businesses

Local government's authority to regulate sexually oriented businesses should be clarified.

***AB 2055 (Gallegos), Chapter 552*****,** clarifies local government authority and states legislative intent with regard to regulation of adult or sexually oriented businesses.

## Explosives

Prior to 1991, all explosives in the United States were classified using an alpha-based system. In 1991, the federal system was changed to conform to the United Nations - based numerical designation system for identifying explosive agents.

***AB 2372 (Assembly Committee on Public Safety), Chapter 478,*** is a technical clean-up law required by a change in the federal statutes. This law changes and clarifies different explosive references to conform to federal law and makes no substantive changes to state law.

## Financial Privacy

Currently, the right to financial privacy permits law enforcement to obtain specified customer account information from a financial institution upon certification that a "crime report" has been filed involving check fraud. The information the institution is required to disclose includes account activity for the period 30 days before and 30 days after the date of the alleged fraudulent activity, account balances, number of items dishonored, the dollar volume of dishonored items, and the dates and amounts of deposits and debits.

Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L.104-193, made amendments to Social Security Sections 454 and 466, requiring states to either establish new or modify existing procedures, as specified. As a result of PRWORA, the Department of Social Services (DSS) indicates the state must develop a method to honor another state's subpoena power for child support enforcement-related information. If federal law is not complied with, DSS indicates $4 billion in federal Title IV-A TANF Program is at risk.

***AB 2452 (Leach), Chapter 771,*** specifies the bank or other financial institution account statements satisfying requirements of the required disclosures to police agencies when they are investigating alleged fraudulent use of checks, drafts or other instruments drawn upon a bank or other financial institution. This law also requires providing information in response to a child support subpoena.

Specifically, this new law:

- Allows copies of complete bank statements to be sufficient, in the specified circumstances related to check fraud, even if the statement period exceeds the exact 60-day window.

- Requires that financial institutions recognize the administrative subpoenas of other states for interstate child support enforcement.

- Requires that if the person who signs the administrative subpoena directs the financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution cannot disclose the subpoena or its response to any such owner.

- Provide that no financial institution or employee can be held liable for disclosing the information as specified above.

- Is double-joined to AB 976 (Papan), Chapter 757.

**Law Enforcement: Criminal Records and Correctional Officers**

The Federal Crime Control Act of 1990 statutorily mandates the already existing Attorney General's Advisory Committee on Criminal History Records Improvement. This requirement needs to be codified.

The Advisory Committee on Criminal History Records Improvement is a panel of representatives from the Department of Justice (DOJ), OCJP, local law enforcement, courts, prosecutors, corrections, probation and other related state agencies. The Committee was created by mandate of the federal Crime Control Act of 1990 which requires each state allocate at least five percent of total funds received to improve the criminal justice records system. The goal is to create a statewide records system functional for all law enforcement throughout the state.

The Advisory Committee should be maintained and empowered and any exclusion of qualified department's representatives should be prevented. The Advisory Committee has proven itself valuable in giving local law enforcement a voice in the design of a statewide criminal records system. For that reason, the Committee's work should be recognized and perpetuated.

***AB 2506 (Battin), Chapter 841,*** requires the Attorney General to appoint an advisory committee, with a specified membership, to the California-Criminal Index and Identification (Cal-CII) system to assist in the ongoing management of the system regarding the operating policies, criminal records content, and records retention. The committee serves at the pleasure of the Attorney General and is required to meet twice annually.

## Firearms: University or College Campus

The Legislature needs to clarify the Gun Free School Zone Act of 1995, which prohibits possession of a firearm on or within 1,000 feet of the grounds of any school.

> ***AB 2609 (Lempert), Chapter 115,*** clarifies the Gun Free School Zone Act to forbid the bringing or possession of any firearm on the grounds of, or in any buildings owned or operated by a public or private university or college used for the purpose of student housing, teaching, research or administration, that are contiguous or are clearly marked university property. This law exempts specified law enforcement and security personnel.
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> In addition, this law clarifies that firearms are not permitted on specified university or college property including places of residence or places of business, and requires a college or university to post a prominent notice at primary entrances on its property that is not contiguous to the main campus grounds stating that firearms are prohibited on that property.

## Damages

Aggressive and dangerous paparazzi-like behavior needs to be discouraged. Some paparazzi physically and electronically trespass, may chase and provoke their subjects, and cause fear or anger.

Although some of this behavior already constitutes common law torts or criminal activity, current damages allowed are de minimis.

> ***SB 262 (Burton), Chapter 1000,*** creates a statutory cause of action for invasion of privacy and constructive invasion of privacy, expanding the common law tort of intrusion, to discourage invasive paparazzi-like conduct. Specifically, this new law:
>
> - Defines “invasion of privacy” as knowingly entering onto the land of another without permission, or otherwise committing a trespass, in a manner offensive to a reasonable person, with the intent to capture any type of audio or video image of the plaintiff engaging in a personal or familial activity.
>
> - Expressly provides that "personal or familial activity" does not include criminal behavior, even if committed in the family home or as part of a family business.
>
> - Establishes the cause of action for constructive invasion of privacy as attempting to capture, in a manner offensive to a reasonable person, any type of audio or visual image of the plaintiff engaging in a personal or familial activity, under circumstances in which the plaintiff had a reasonable

expectation of privacy, and through the use of technological equipment without which a physical trespass would have been necessary.

- Specifically exempts from the scope of these causes of action, lawful activities of law enforcement of other governmental agencies or other entities, public or private, designed to obtain evidence of suspected illegal activity or insurance fraud.

- Provides for recovery of three times the amount of general and special damages proximately caused by the invasion or constructive invasion of privacy, punitive damages, and disgorgement of any proceeds or other consideration received if the invasion or constructive invasion was committed for a commercial purpose. Any person who directs, solicits, actually induces or otherwise actually causes another to violate this section may also be held liable for damages, including punitive damages.

**Peace Officers: School Security Officers: Training**

Wide disparities exist between schools and districts relating to the background checks and security service training.

***SB 1626 (Hughes), Chapter 745,*** requires school security officers, as defined, who work more than 20 hours per week to complete a new school security training course, which will be developed. This law precludes security guards from being employed directly or as contract employees at K-12 schools or community colleges after July 1, 2000 unless they have cleared criminal background checks. Specifically, this new law:

- Requires the creation of a new training course designed for school security officers.

- Requires after July 1, 2000, every K-12 and community college school security officer and every school security officer working on the property of a K-12 school or community college district pursuant to a contract with a private licensed security agency, who works more than 20 hours a week as a school security officer, to complete the new course.

- Requires every school security officer employed by a school district, prior to July 1, 2000, to meet the new training requirement by July 1, 2002 and exempts security officers who already completed a 32-hour training course related to school police/security functions.

- Requires all security guards and school security officers employed by or working at a public school district to have passed criminal background checks before working at the schools.

## Animal Euthanasia

The carbon monoxide (CO) chamber can potentially pose a health hazard to animal shelter personnel, is not the most humane euthanasia method, and is not suitable for all animals. In addition, according to the State Auditor, the Department of Food and Agriculture is not inspecting CO chambers as required by law.

***SB 1659 (Kopp), Chapter 751,*** prohibits using CO gas for dog or cat euthanasia as of January 1, 2000. Specifically, this new law:

- Prohibits CO use for killing dogs or cats as of January 1, 2000.
- Prohibits using gas to kill any newborn dog or cat whose eyes have not yet opened.
- Repeals inspections of CO chambers as of January 1, 2000, and makes conforming changes.
- States legislative intent that the Veterinary Medical Board consider the needs of small and rural counties in developing any regulations necessary to implement this act.

## Privacy: Electronic Tracking Device

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An electronic tracking device (ETD) is used to monitor a vehicle's movements via satellite and a computerized map. ETDs are utilized by law enforcement to track the movements of suspects, by shipping companies for fleet management, and by average citizens for theft prevention.

Unfortunately, ETDs may also be used to violate privacy rights. Any person can use an ETA to monitor another person's movements.

***SB 1667 (Burton), Chapter 449,*** makes it a misdemeanor for specified persons to utilize an ETD to determine the location or movement of a person. This law lists specified ETD usage as grounds for license revocation. Specifically, this new law:

- Provides it is a misdemeanor for a person or entity to use an ETD to determine the location or movement of a person, punishable by up to six months in the county jail and a fine up to $1,000.
- Provides violation of the misdemeanor provision constitutes grounds for revocation of the license issued, as specified.

- Exempts the lawful use of an ETD by a law enforcement agency and the use of an ETD when the registered owner, lessor, or lessee of a vehicle has consented to the use of the ETD with respect to that vehicle.

- Defines an "ETD".

- Contains legislative findings and declarations relating to privacy.

## School Safety

California students are increasingly concerned about campus safety. Federal and state laws require universities to prepare, post and copy for distribution their campus security plan, available crime prevention services, and campus crime figures.

However, there is no statute governing the coordination of services between campus police and local enforcement agencies. Whereas some universities have comprehensive agreements delineating jurisdiction lines and shared responsibilities, some campuses have none.

***SB 1729 (Thompson), Chapter 284,*** enacts the "Kristin Smart Campus Safety Act of 1998" which requires any post-secondary institution receiving public funds to enter into a written agreement with local law enforcement agencies regarding the coordination and responsibilities for investigating on-campus violent crimes.

## Sellers of Travel: Travel Consumer Restitution Program

The Travel Consumer Protection Program should be continued and improved.

***SB 2175 (Alpert), Chapter 924,*** re-enacts the law regulating the sale of travel services for seven years. Specifically, this new law:

- Re-instates, until January 1, 2006, the Sellers of Travel (SOT) Law program and expands coverage to include land portions of trips, such as surface transportation, meals, guides, sightseeing and vehicle rental.

- Increases the annual level of the SOT Restitution Fund from $1.2 million to $1.6 million to accommodate, in part, the expanded claim coverage and authorizes the program to utilize interest earned on the Fund to pay for its operations, provided that certain conditions are met.

- Increases the initial, one-time application fee paid by new SOT to fund the program's operations, from $35 to $75 a year.

- Makes numerous changes to the emergency assessment authority of the Travel Consumer Restitution Corporation.

- Simplifies the SOT re-registration process and disclosure requirements.

- Establishes a $50 minimum consumer loss and refundable $35 filing fee in order for a consumer to file a reimbursement claim, and a $50 fee for reconsideration of adverse decisions.

- Clarifies which expenses are eligible for reimbursement, excluding lost wages, pain and suffering, emotional distress, travel insurance, lost luggage and consequential damages.

- Reduces the time period for filing restitution claims from one year to six months.

- Provides that a consumer who files a claim with the program waives his or her right to also file a lawsuit against the travel seller for the same transaction. Additionally, this law requires disclosure of that waiver in the claim form sent to the consumer and provides that the waiver does not apply if the consumer's claim is denied for specified reasons. This law preserves claimants' right to appeal unfavorable decisions.

- Appropriates $395,000 from the Travel Seller Fund to the Department of Justice for purposes of continuing the routine appropriation to the program for the last six months of Fiscal Year 1998-99.

- Requires the Attorney General's Office to submit a report to the Legislature by January 1, 2005.